

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF: ) IN THE PROBATE COURT  
 NELVA E. BRUNSTING, ) NUMBER 4 (FOUR) OF  
 DECEASED ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION FOR PARTIAL SUMMARY JUDGMENT  
 & JOINT MOTION FOR CONTINUANCE

\* \* \* \* \*

On the 5th day of September, 2018, the following  
 proceedings came to be heard in the above-entitled and  
 numbered cause before the Honorable Clarinda Comstock  
 Associate Judge of Probate Court No. 4, held in Houston,  
 Harris County, Texas:

Proceedings reported by Machine Shorthand

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(Motions Hearing)

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1 September 5, 2018

2 PROCEEDINGS:

3 THE COURT: So, we are here on Cause  
4 Number 412249 in the 401, The Estate of Nelva E.  
5 Brunsting, Deceased.

6 And my understanding is we are here on  
7 Carl Henry Brunsting's motion for partial summary  
8 judgment; it was filed in July of 2015.

9 And also, the Defendants - Anita Brunsting  
10 and Amy Brunsting - have filed a joint motion for  
11 continuance regarding that partial summary judgment.

12 We have a lot of people in the room. If  
13 we could have announcements for the record, I'd  
14 appreciate that.

15 MR. MENDEL: Steve Mendel and Tim Jadloski  
16 for Anita Brunsting.

17 MR. SPIELMAN: Neal Spielman for  
18 Defendant, Amy Brunsting.

19 MS. BAYLESS: Bobbie Bayless for Carl  
20 Brunsting.

21 MS. CAROLE BRUNSTING: Carole Brunsting,  
22 Pro Se.

23 MS. BAYLESS: And, Judge, I filed some  
24 things yesterday - I don't know if they've made it to  
25 your desk. I brought copies.



1 THE COURT: Please approach.

2 Thank you. Okay. So, I've been handed  
3 the Objection To Attachment of Exhibit A To Defendants'  
4 Joint Response To Plaintiff's Motion For Partial Summary  
5 Judgment, a Response To Defendant's Joint Motion For  
6 Continuance Regarding Carl Brunsting's Motion For  
7 Partial Summary Judgment and the Response To Candace  
8 Curtis' Plea In Abatement.

9 I'm not going to be addressing the plea in  
10 abatement today - it wasn't set for hearing as far as I  
11 know; so, I'm going to set that one aside.

12 Has everyone received the other two  
13 pleadings?

14 MR. MENDEL: Yes, ma'am.

15 THE COURT: Okay.

16 MR. SPIELMAN: This morning, yes, ma'am.

17 THE COURT: Okay. Well, I guess we ought  
18 to address the motion for continuance first.

19 Mr. Mendel, would you like to?

20 MOTION FOR CONTINUANCE

21 ARGUMENT BY MR. MENDEL:

22 MR. MENDEL: Yes, ma'am.

23 The -- well, as the Court is aware -- and  
24 I'd like to go back in time a little bit.

25 There was a status conference back in

1 March of 2016. The Court indicated everybody needs to  
2 go to mediation. Everybody agreed to go to mediation.  
3 Everybody agreed to go before Judge Davidson. That was  
4 set for July 12th.

5 On July 5th, Candace, Plaintiff, and her  
6 boyfriend/significant other filed the federal court  
7 case. That cancelled the mediation. And essentially,  
8 everything just stopped pending the outcome of the  
9 federal proceedings as the --

10 THE COURT: I'm sorry. Let me just  
11 interrupt really quickly.

12 Are we anticipating that she's going to  
13 make an appearance here today - Ms. Curtis?

14 MR. MENDEL: I'm not. We haven't heard  
15 from her.

16 THE COURT: Okay. I'm sorry to interrupt  
17 you.

18 MR. MENDEL: And so, anyway, it took a  
19 while for the district court to render its opinion, then  
20 it went up to the Fifth Circuit.

21 Long story short - on or about June 6th,  
22 the court of appeals for the Fifth Circuit rendered an  
23 opinion in favor of all of the defendants. The -- and  
24 so really -- and then Carl Brunsting, I guess, refiled  
25 the motion that had previously been filed. And so, it's

1 really, I guess, time to kind of like put this thing  
2 back on the docket. And so, procedurally, that's kind  
3 of where we are.

4           So, you might also recall that a temporary  
5 administrator was appointed in the case back in July of  
6 '15. One of the tasks that was associated with that -  
7 the temporary administrator's responsibilities - was to  
8 evaluate the documents, and he rendered an opinion in  
9 January of 2016. He actually issued a report - an  
10 amendment or a supplemental to it - indicating that he  
11 considers these documents to, both, the Qualified  
12 Beneficiary Designation and the trust agreements, to be  
13 valid and that Nelva Brunsting was within her rights to  
14 exercise the power of appointments that were not only in  
15 those documents but are very common in a lot of  
16 estate-planning instruments.

17           And so, right now we have no temporary  
18 administrator on the file with regard to -- for the  
19 probate side in the case that involves Vacek & Freed.  
20 And so, the -- we believe that the case should be  
21 continued so that we can:

22           a) Discovery can move forward because it's  
23 been put on hold.

24           Our side wants some sort of a definite  
25 trial date. We circulated -- we didn't really have a



1 chance to discuss, but we drafted something this morning  
2 that, have a conversation with our colleagues about; but  
3 let's get a trial date; let's back into the, what the  
4 other deadlines need to be; put this case back on track.  
5 And at a more appropriate time when there's been an  
6 opportunity for some discovery, Carl Brunsting can  
7 reassert his motion for summary judgment and be heard.  
8 But we think it's premature to do it today.

9 THE COURT: What sort of discovery remains  
10 to be done? I know that this case has been on file for  
11 quite some time and for a lot of reasons.

12 MR. MENDEL: Well, depositions among  
13 parties. There's also the issue of whether or not the  
14 Vacek case gets transferred from the district court.  
15 There's, to my recollection, there's been no particular  
16 ruling on that.

17 THE COURT: That's correct.

18 MR. MENDEL: And so, if they're going to  
19 be involved, then -- are you here on the Vacek group?

20 UNIDENTIFIED PERSON: Yeah, I'm their  
21 lawyer.

22 MR. MENDEL: Okay. All right.

23 THE COURT: Would you like to make an  
24 announcement?

25 UNIDENTIFIED PERSON: I'm not making an

1 appearance. Andrew Johnson on behalf of Vacek &  
2 Freed --

3 COURT REPORTER: Say your name again,  
4 please, sir.

5 UNIDENTIFIED PERSON: Andrew Johnson.

6 COURT REPORTER: Thank you.

7 MR. JOHNSON: Not making an appearance.

8 MR. MENDEL: He just wanted to watch.

9 MR. JOHNSON: That's right.

10 MR. MENDEL: And there needs to be a  
11 decision with regard to whether or not that case is  
12 going to come over because if that case is going to come  
13 over, there's a discovery component over there. There's  
14 also a summary judgment that's hanging out over there in  
15 the district court side. So, from our perspective, we  
16 will feel like there's some procedural issues and some  
17 discovery issues that need to be resolved.

18 But the biggest thing on discovery is we  
19 want to pin down just exactly -- I think it would be a  
20 fair statement to say that the Plaintiffs tend to be a  
21 little bit all over the map about what it is they want,  
22 and we want to pin down just exactly what they're  
23 complaining about and take -- everybody be given a  
24 reasonable opportunity to take whatever depositions they  
25 want to take to propound any further written discovery



1 they want to propound - there's things that we want to  
2 do - and then let's come back. And I think as part of  
3 this case, some of this case can be resolved in summary  
4 judgment, but I just think it's premature to do it  
5 today.

6 THE COURT: How much discovery has already  
7 taken place? Have we already had some depositions?  
8 Have we -- my memory is that some written discovery has  
9 been exchanged.

10 MR. MENDEL: I didn't go back and look at  
11 everything that's transpired. Our office has not been  
12 involved in any depositions and it's -- the case is ripe  
13 to do that notwithstanding, from our perspective,  
14 whatever it is Candace Curtis might do as her next  
15 pleading besides her plea in abatement. But we want to  
16 take some depositions. We want to update some of the  
17 written discovery, and we believe there are certain  
18 issues that lend themselves to be narrowed, and we want  
19 to do that. And we're going to want to come back with  
20 motions for summary judgment, certainly as to the  
21 Plaintiffs' claims. And we think this case can be  
22 narrowed on summary judgment at a later date, but let's  
23 wrap up some discovery.

24 THE COURT: Who here is best situated,  
25 except Mr. Johnson, to speak about what's going on in

1 the district court case? Anyone?

2 MR. MENDEL: I'm going to just -- I'm just  
3 going to tell you what I recall from the March hearing  
4 if that's all right?

5 THE COURT: Well, I remember the March  
6 hearing.

7 MR. MENDEL: I know, you were there.

8 THE COURT: I was there.

9 MR. MENDEL: Nothing new has transpired  
10 since -- nothing's transpired.

11 THE COURT: It's been completely on hold?

12 MR. MENDEL: Everybody's been on hold.  
13 Mr. Vacek, and I think Ms. Kunz, were part of the  
14 federal court case; and so, everybody just -- I think it  
15 was kind of unspoken - we're not going to do anything in  
16 this case until that's resolved because it wasn't clear:  
17 Are we going to be over in federal court? Are we going  
18 to be over here? So, it's my understanding, and my  
19 colleagues are welcome to correct me including Mr.  
20 Johnson, I don't think anything's going on.

21 MR. JOHNSON: And I don't mind stating as  
22 a factual matter - the Carl Brunsting's claims in  
23 district court against my client and they've now said  
24 he's completely incapacitated. So, there's no  
25 representative of the estate at this point. There's no

1 one to bring claims against our client in district  
2 court. So, yeah, necessarily it's on hold right now.

3 MS. BAYLESS: There's an absence of a  
4 party over there because there's no temporary  
5 administrator here now. There's no personal  
6 representative of the estate. So, that case, in fact, I  
7 think it's got a couple -- at least one trial setting  
8 that's just -- it just rolls over because they can't do  
9 anything 'cause there's no party there.

10 MR. MENDEL: And I think there's a summary  
11 judgment hanging out there as well.

12 MR. JOHNSON: I believe we have a motion  
13 for sanctions that's been pending for two years that's  
14 stalled the motion for sanctions.

15 THE COURT: Against?

16 MR. JOHNSON: Against the parties --  
17 against Mr. Brunsting.

18 MS. BAYLESS: And for -- and just so the  
19 Court understands - it's a motion for sanctions because  
20 a transfer was asked, was requested, that that case come  
21 from district court over here that prompted a motion for  
22 sanctions. I think there was also pending a motion for  
23 summary judgment when the absence of the party became an  
24 issue; and so, that's never been responded to, that's  
25 never been addressed; the motion for sanctions has not



1 been addressed once until like I said, a transfer  
2 request.

3 MR. JOHNSON: And for the record - the  
4 motion for sanctions is not based on a transfer request,  
5 is that when we took Mr. Brunsting's deposition in that  
6 case, he didn't have any factual knowledge whatsoever to  
7 base any of his claims at all and that a few days later,  
8 Ms. Bayless comes and says, "I think he was  
9 incapacitated at that time." Never brought that up  
10 during the deposition at all. So, that's our basis for  
11 sanctions in the district court case.

12 MS. BAYLESS: He's read a different motion  
13 than I have, Judge. But the point is the motion speaks  
14 for itself, but that's what's going on. That case is  
15 just sitting there.

16 THE COURT: Okay. And what's the status  
17 of -- I mean, are there pleadings on file regarding the  
18 appointment of a successor administrator or --

19 MS. BAYLESS: In that case? The district  
20 court case?

21 THE COURT: Well, no, I guess that would  
22 be here, wouldn't it?

23 MR. MENDEL: There's nothing on file; is  
24 that correct?

25 MR. SPIELMAN: I'm speaking off the top of

1 my head which is, as you know, never a great idea.

2 I thought we had some competing motions  
3 that were put on -- that may have led to the appointment  
4 of Mr. Lester, and then those competing motions have  
5 basically been on hold pending what turned out to be the  
6 report and the mediation instruction and then the --

7 MR. MENDEL: And his term expired. He was  
8 just a temporary. So, we have, as Ms. Bayless  
9 indicated, we don't have anybody there, and somebody  
10 needs to be there.

11 MS. BAYLESS: And I don't know -- I think  
12 he had -- I think the temporary administrator had some  
13 communications with the Vacek & Freed counsel, but I  
14 don't know that they were about the cases. But I don't  
15 know that he ever -- did he enter an appearance?

16 MR. JOHNSON: I don't know.

17 THE COURT: I'd be surprised if he did.

18 MS. BAYLESS: And I don't know that -- I  
19 think he just kind of put it on hold because he knew he  
20 was temporary, he wasn't going to be there long.

21 THE COURT: Well, my memory is that he had  
22 very limited authority.

23 MS. BAYLESS: Right.

24 THE COURT: I don't think he had authority  
25 to make an appearance in other litigation.



1 MR. SPIELMAN: I think -- but again, I  
2 think he was maybe given some instruction to evaluate  
3 the documents and then sort of subsumed in that  
4 evaluation was - perhaps should that district, state  
5 district court case proceed, and if so, how? Again, I'm  
6 a little cobwebbed on that, but I think it's in the  
7 Court's order appointing him.

8 MS. BAYLESS: But whatever his authority  
9 was, it expired. And to my knowledge, he didn't take  
10 any action.

11 THE COURT: Okay.

12 MS. BAYLESS: I mean, I still get the  
13 notices. I'm not involved in the process, but I still  
14 get the notices. So, I don't think he filed any type  
15 appearance, but I could be wrong.

16 THE COURT: Okay. So, with regard to  
17 what's set today, the motion for summary judgment filed  
18 by Carl Brunsting here in this 402 -- 401, who is acting  
19 on Carl's behalf? Does he have capacity?

20 MS. BAYLESS: Attorney-in-fact is his  
21 wife.

22 THE COURT: Has there been any objections  
23 raised to that?

24 MS. BAYLESS: No.

25 THE COURT: Okay. Okay. Well, you know,

1 when I read these pleadings -- I'm sorry. I haven't  
2 really given you a chance to respond to everything  
3 that's been said on this side.

4 ARGUMENT BY MS. BAYLESS:

5 MS. BAYLESS: Well, in terms of the  
6 continuance, this really is an issue about what's in the  
7 documents and what happened based on what the documents  
8 authorize. There's no discovery that's needed to  
9 address this motion for summary judgment.

10 I don't disagree that the case has a long,  
11 drawn-out history with a lot of delays, but, you know,  
12 it is what it is. And during those periods, whether  
13 there was actually an abatement or whether it just would  
14 make no sense to try to get any discovery done, it's  
15 really an academic discussion. But the point is, we are  
16 where we are and this -- we got to get something moving.

17 My client desperately needs to have his  
18 trust assets available to him, and nothing is happening;  
19 and so, now that we -- the federal case is behind us,  
20 this has been on file for quite some time; and so, it  
21 seemed like a good way to get the process going. It's a  
22 partial motion. It obviously doesn't dispose of the  
23 whole case. So, those issues that remain in the case  
24 that keep the whole case from being disposed of, need to  
25 be addressed. I'm not saying that they don't.

1                   But this is a very narrow issue on what  
2 the documents say and whether the documents can be  
3 followed. And they say, "We need all the discovery for  
4 the case." I don't disagree, but they don't need the  
5 discovery for this motion. They don't point to one  
6 thing - now that they don't have available to them to  
7 address the motion - which is what the rule requires if  
8 they're going to seek a continuance saying they don't  
9 have the evidence they need to respond to the motion.  
10 And so, you can't just say - we need a bunch of  
11 depositions in the case so that then we can come back  
12 and deal with it; you have to say what you need to  
13 respond to this motion, and there isn't anything. And  
14 so, it's quite -- seems quite natural that they haven't  
15 pointed to anything 'cause I don't think there is  
16 anything.

17                   This motion, in its very limited scope,  
18 can be decided based on what's before the Court. And if  
19 they had some witness that they thought would impact on  
20 that response that they need to make, they should have  
21 brought forward the specifics of what it is that they  
22 need, and I haven't seen any of that.

23                   So, I think the continuance should be  
24 denied.

25                   And as to the issue of -- well, we haven't



1 really gotten into the merits of the motion, I suppose;  
2 but if you want to take the continuance first, then I  
3 can respond to whatever he says about the motion.

4           But their reliance - I will just say  
5 quickly - that their reliance on the temporary  
6 administrator's report is obviously not going to be  
7 something that this Court can rely on for determining  
8 the legal issue. You don't take expert testimony on  
9 legal issues, and he made a cursory report based upon a  
10 short period of time he was in the case. So, he doesn't  
11 decide the case - the Court decides the case; and the  
12 Court has to decide the legal issues that determine the  
13 case.

14           So, you know, that's the one document that  
15 they have attached to their response, and that's my  
16 objection to that.

17           THE COURT: Okay. Did you want to  
18 respond?

19           FURTHER ARGUMENT BY MR. MENDEL:

20           MR. MENDEL: Real quick.

21           a) The Court is free to take judicial  
22 notice of its pleadings, and we attached that for the  
23 Court's convenience.

24           You know, Mr. Lester ought to be deposed.  
25 We go depose him, and we can come back here on her

1 summary judgment, and we can set a short timeframe to go  
2 do that. He's right down the street, at least down the  
3 street from me.

4 THE COURT: Well, I don't know that  
5 deposing Mr. Lester is really, you know -- I would have  
6 to go back and look at the order appointing Mr. Lester  
7 and refresh my memory about all of the reasons why we  
8 went down that road. And, you know, to some extent, I  
9 think Ms. Bayless is correct in terms of it's the  
10 Court's job to look at the documents and make a ruling.  
11 And our approach - or my approach - to these types of  
12 motions for summary judgment that involve a heavy review  
13 of estate-planning documents is - I usually review the  
14 pleadings, come out for the hearing, listen to whatever  
15 argument is given, and then go back and really dig into  
16 the documents and see if I can make any determinations  
17 that don't involve fact issues, you know, regarding  
18 those documents and the issues that are pled.

19 So, I did not intend to make a ruling  
20 today on the partial motion for summary judgment because  
21 I would have to go back, and of course, Judge Butts  
22 would get involved in that review; and she is the one in  
23 this court with a lot of experience with the  
24 estate-planning angle; and she, ultimately, would be the  
25 one reviewing those documents and ruling on a summary



1 judgment related to them.

2           And looking at the pleadings that have  
3 been filed, and I just make a cursory review of your  
4 response because I haven't had time, really, to look at  
5 it thoroughly. It does seem like there are some fact  
6 issues involved in the motion and -- but I really, I  
7 really feel like it would be helpful for all of the  
8 litigation if somebody made a ruling on the documents.  
9 And it seemed like, you know, there was some tension  
10 between which Court was going to do that, and maybe Mr.  
11 Johnson can chime in about how the district court feels  
12 about this. But I don't know if the district court  
13 would prefer to have the probate court rule on that  
14 issue? I don't know if they have a preference one way  
15 or the other.

16           MR. JOHNSON: I'm unaware of one.

17           THE COURT: Okay. In my mind, it makes  
18 sense to have a probate court rule on the documents to  
19 the extent that it can, and I think a summary judgment  
20 is the appropriate vehicle to get that done. But I want  
21 to be cognizant of the fact issues, and I want to be  
22 able to determine what the fact issues are; and so, if  
23 you could, Mr. Mendel, if you can give me a little bit  
24 more feedback about what discovery needs to be done  
25 before we can rule, specifically, about the issue that's

1 been raised in the partial motion for summary judgment,  
2 that would help me.

3 ARGUMENT BY MR. SPIELMAN:

4 MR. SPIELMAN: Well, Your Honor, can I  
5 chime in real quick just 'cause I want to make sure that  
6 we're all on the same page.

7 I'm looking at the motion for partial  
8 summary judgment that Ms. Bayless filed on Carl's  
9 behalf, filed 7-9, 20-something. My eyes can't --

10 THE COURT: 2015.

11 MR. SPIELMAN: 2015. And it says on Page  
12 2, it identifies two summary judgment issues - one of  
13 them is what seems to be predominantly part of our  
14 discussion so far which is Ms. Bayless' or Carl's  
15 position that the Qualified Beneficiary Designation is  
16 null and void.

17 But the second issue that's pending in the  
18 summary judgment - if whether the disbursements in 2011  
19 of Exxon Mobile stock and Chevron stock were improper  
20 distributions. And I think that's raised in the joint  
21 response, but that is certainly an issue for which there  
22 are significant factual disputes for which there is a  
23 need to conduct significant discovery to determine the  
24 context of what happened, how it happened, who gave the  
25 instruction, why the instruction was given, so forth and



1 so on. And in that regard, that issue implicates  
2 virtually every single party to this case because you  
3 have people that received the distributions who, my  
4 recollection, is Ms. Carole Brunsting, my client, Amy  
5 Brunsting, and I don't remember specifically back, I  
6 think maybe even Anita, I'm not sure; and then you have  
7 the complaint that sort of underlies part of this case  
8 from Carl Brunsting and -- from Carl Brunsting that he  
9 didn't get what others got, and that is part of what  
10 this is all about.

11 So, as far as what additional discovery is  
12 needed to be done to deal with this motion, at least as  
13 to that second point - all of it needs to be done.  
14 There is not one single fact witness deposition unless  
15 you, perhaps, could use the Carl Brunsting deposition  
16 from the district court if you are allowed to do that  
17 procedurally, but that's now burdened by Ms. Bayless'  
18 description of Mr. Brunsting's condition at that  
19 deposition. So, we're nowhere.

20 In terms of whether Mr. Lester gets  
21 deposed or doesn't get deposed and whether or not his  
22 opinion in the report controls the outcome of issue  
23 number one, I mean, grant it, I'm not, you know, here in  
24 the probate court every day, but, you know, I submit  
25 summary judgment motions and summary judgment responses

1 that are based on expert reviews and expert testimony  
2 all the time. And while they may not be able to render  
3 an opinion on the specific legal issues, so for example,  
4 they couldn't say, "X" was negligent - they can  
5 certainly say all of the things that create the elements  
6 of negligence. And I'm using that as just an example,  
7 not that there's negligence pending in this particular  
8 case.

9                   And to that point, Judge, I think we can  
10 examine Mr. Lester to get, as an expert, if you want to  
11 call him an expert, as a appointee of the Court, to get  
12 his perspective on what he saw that led to his ultimate  
13 conclusions so that the Court can know what direction he  
14 went in.

15                   And to that point as well, I suspect there  
16 is also some information that can be obtained from the  
17 Vacek & Freed lawyers about what was going on at the  
18 time that Qualified Beneficiary Designation was prepared  
19 and entered that might speak to the issues about whether  
20 it's null and void, whether it was done in violation of  
21 other sections of the trust agreement, et cetera, et  
22 cetera.

23                   So, to speak to the specifics of what  
24 discovery is needed - again, Mr. Mendel has said it  
25 eloquently, but I'll say it specifically - all of it.

1 There has been some written discovery. My recollection  
2 is, is that some of the written discovery was issued to  
3 Candace Curtis, and I don't believe that's been properly  
4 responded to at all. And so, to the extent that we need  
5 information from that piece of the puzzle, we have none  
6 or at least we have none pending a hearing on whether or  
7 not her written discovery responses are proper or  
8 improper.

9                   And so, I'll just say that I don't think  
10 that this case is positioned for a ruling on any of the  
11 summary judgment issues; although, I would agree that  
12 that would be a useful ruling to make at the appropriate  
13 time. And I think the one thing that we can probably  
14 all agree to - or agree on - is that in some form or  
15 fashion, we can be inspired by today's proceeding to get  
16 some structure to this case where there is none.

17                   THE COURT: I would love to have some  
18 structure to this case. This case has been pending a  
19 very long time, and I would really like to get it  
20 moving.

21                   So, you seem to think that every  
22 deposition needs to be taken. Have any depositions been  
23 taken other than Carl Brunsting's deposition in the  
24 other case?

25                   MR. SPIELMAN: No, Your Honor, not unless



1 they were taken before we were involved.

2 FURTHER ARGUMENT BY MS. BAYLESS:

3 MS. BAYLESS: Well, Carole Brunsting has  
4 been deposed in a pre-suit deposition, but that's it.

5 And if I could respond a bit, Your Honor,  
6 to the suggestion that because in the motion for summary  
7 judgment also deals with some transfers that we allege  
8 were improper, that that requires a bunch of discovery.

9 The point of this motion - there are lots  
10 of other reasons why the transfers were improper in my  
11 mind that deal with a lot of fact issues - but this  
12 particular reason is because it violates the terms of  
13 the trust. Assets were paid to people other than the  
14 "survivor of the founders", as they're called in the  
15 documents.

16 One of the trusts said that that was for  
17 her benefit. These trusts were paid to other people --  
18 I mean, these amounts were paid to other people.

19 And then as to the second trust, the  
20 asset -- the principal of the trust was even paid out  
21 which was not to be paid out, and the income from that  
22 trust was to go to the surviving founder.

23 So, again, it's a document issue. It's  
24 not - what do these people have in their mind when they  
25 did this or didn't do that. That may well be an issue

1 that needs to be explored at some point in time. I'm  
2 not saying that it isn't - I'm suggesting that it is.  
3 But this particular issue is not based upon those kinds  
4 of things. It's no defense to the fact that they paid  
5 assets out of the trust that were unauthorized to  
6 payments because they had a good attitude about it or  
7 because they thought they needed to. The written  
8 discovery says that Anita pay these assets because her  
9 mother told her to. Her mother was not the trustee at  
10 that point; she was the trustee. So, they have to  
11 follow the terms of the trust. And this motion is all  
12 about that they did not do that. It doesn't have  
13 anything to do with the factual breach of fiduciary  
14 issues - it has to do with violating the document breach  
15 of fiduciary issues.

16 So, you know, I just -- I think if the  
17 Court reviews the motions -- reviews the motion, it will  
18 be pretty clear that it is limited to the question of  
19 whether the trust instruments were followed in these  
20 specific things that are covered by the motion.

21 Again, the broader case is a different  
22 issue, and I'm not arguing with you that there isn't a  
23 lot that needs to be done in the broader case. But as  
24 far as dealing with this particular issue, these  
25 particular issues, I think the Court has everything it

1 needs. And I don't really think that any of the things  
2 that these counsel have been saying are needed, are  
3 needed for this motion. They are needed in the case,  
4 yes; and the case will be going forward. But this  
5 motion is a motion that the Court can deal with based  
6 upon what is before it. It's all about the documents.

7 THE COURT: I'm not sure that that's  
8 really true. I do have concerns about whether -- I will  
9 need to look back at the documents. As I said, I've  
10 looked at them, but I really need to hone down and make  
11 a decision about whether that is true. But my sense,  
12 right now, is that there may well be some fact issues  
13 related to the trustee, what her, you know, how she was  
14 to get her direction from Nelva Brunsting, if at all,  
15 and what Nelva's rights were as a beneficiary under the  
16 trust, you know, in terms of those distributions. So, I  
17 need to look more closely at that.

18 MS. BAYLESS: I understand.

19 THE COURT: I am concerned jumping  
20 straight back into this after it's been on hiatus for so  
21 long. I'm concerned about getting it amped up again,  
22 ramped up again and getting things moving. I would kind  
23 of like to get a docket control order if we could get  
24 one signed today; is that a possibility? Can we talk  
25 about --



1 MR. MENDEL: I did a draft and circulated  
2 it to colleagues.

3 THE COURT: Do you have our form docket  
4 control order?

5 MR. MENDEL: No. No, Judge. We tarp --

6 a) Because there are people out of town,  
7 Anita Brunsting is out of town, Amy Brunsting's out of  
8 town, Candace Curtis is out of town - I would  
9 respectfully suggest it would be great if we could have  
10 a preferential setting. I was suggesting that we go the  
11 last two weeks of June and then back-up into what the  
12 deadlines need to be from there.

13 MS. BAYLESS: Can I address one issue?

14 THE COURT: You may, yes.

15 MS. BAYLESS: I'm a little bit concerned  
16 about the current status of who the parties are in the  
17 sense that the case that Candy filed in -- the original  
18 case that Candy filed in federal court, and this is  
19 dealt with in my response to their plea in abatement,  
20 which was remanded to this court and eventually was  
21 consolidated in this case.

22 THE COURT: I was going to confirm that  
23 with you guys today. That was my understanding, too;  
24 does anyone have a different understanding?

25 MS. BAYLESS: Yes, that is. In the

1 documents relating to that, are attached to that  
2 response I filed.

3           But the problem is we don't -- so, they're  
4 Plaintiffs. Candy is a Plaintiff; Carl is a Plaintiff;  
5 the estate, presumably, is a Plaintiff if it has a  
6 representative. But in particular, as between Carl's  
7 case and Candy's case - we don't agree on everything.  
8 And so, when they talk about the Plaintiffs did this and  
9 the Plaintiffs did that - I don't really know, you know,  
10 if that's something I'm supposed to respond to, if  
11 that's something Candy is supposed to respond to. So, I  
12 don't exactly know how to deal with that procedurally.

13           THE COURT: Well, if it makes you feel any  
14 better, I don't think of you two as the same party.

15           MS. BAYLESS: That makes me feel a lot  
16 better.

17           THE COURT: I mean, it's been clear to me  
18 that you guys have a somewhat different take on things;  
19 and so, I do consider you both to have your individual  
20 claims, if that helps.

21           MS. BAYLESS: Okay. I don't know, as we  
22 go forward, exactly how we're going to do that unless  
23 maybe we just all need to agree that we're going to call  
24 people by their names or something as opposed to  
25 "Plaintiffs" because otherwise, I'm not going to know

1 if they're accusing me of something or --

2 THE COURT: Well, I do think that it would  
3 be helpful if we refer to people -- there are just too  
4 many claims going in different directions not to refer  
5 to people by their names, and you know, they're good  
6 names, so let's use them. And you can refer to them as,  
7 you know, "Carl Plaintiff" or however.

8 MS. BAYLESS: Okay.

9 MR. MENDEL: I'd like to say that I would  
10 love nothing better than to leave here with a docket  
11 control order to the extent that it can be worked out  
12 with the Court now - that would be great.

13 THE COURT: We don't have -- I guess  
14 Candace Curtis is the only one we're missing. Usually,  
15 my -- our docket control orders are agreed, but under  
16 the circumstances, I mean, I can't force someone to come  
17 to court and participate. I don't mind, in a case like  
18 this, going ahead and setting a trial date just by way  
19 of management of our docket. And I think we do have  
20 some time available the end of June - it's actually  
21 about where I'm setting trials right now. I'm assuming  
22 this is going to be a jury trial; what do you think?  
23 And I'll preface that by saying:

24 Remember, we don't really have a  
25 courtroom. We're still sharing this courtroom with the



1 criminal court. We get, weeks like this, we get three  
2 days of having our courtroom while they're over in the  
3 criminal courthouse doing their jail docket; and so,  
4 it's very challenging for us to put together a courtroom  
5 for a jury trial. So, I would imagine that no matter  
6 what decision we make, there's somebody missing from the  
7 table, and that person can always chime in and say that  
8 they want a jury trial; is that fair?

9 MR. MENDEL: Fair.

10 MS. BAYLESS: There may already have been  
11 a jury demand made, Your Honor, I just can't remember.

12 THE COURT: Okay. Well, I have to treat  
13 this, then, as though it's going to be a jury trial.  
14 With that in mind, how much time do you think this case  
15 will need to be tried?

16 MR. MENDEL: A week.

17 MS. BAYLESS: He's an optimistic, Your  
18 Honor.

19 MR. MENDEL: You're right. With regard to  
20 the California Plaintiff, I'm not sure how quickly they  
21 can put on their side, but if we follow the rules --

22 THE COURT: I think --

23 MR. MENDEL: -- we got to get it.

24 THE COURT: -- I think that a case like  
25 this doesn't deserve more than a week, frankly. I think

1 it needs -- it's going to take some effort to control  
2 this case in a jury trial, and I think we're just going  
3 to have to make that effort. If we let it go for more  
4 than a week, we're going to have an angry jury and an  
5 angry courtroom and a lot of trouble finding space to do  
6 it. So, I'm going to limit it to a week, at least  
7 that's what I'm going to reserve; and so, maybe the last  
8 week of June would be a good time. How -- if we're  
9 going to set this the end of June, when do you think is  
10 proper for a deadline for motions for summary judgment?  
11 Because I want to get to the dispositive motions, and  
12 clearly, you can file them anytime. You can reset. And  
13 I haven't ruled on the continuance, but I think you know  
14 where I'm going. How soon do you think we can get back  
15 to that issue?

16 MR. MENDEL: Well, may I approach again?

17 THE COURT: Sure.

18 MR. MENDEL: This was a draft for talking  
19 purposes. We had set -- or we had proposed that a  
20 no-evidence motion for summary judgment not be filed  
21 until February 4th. You could file motions for summary  
22 judgment sooner. We had suggested that April 19th be  
23 the final day that they have to be heard. What we  
24 should probably do for purposes of today is pick what's  
25 the earliest date people can start filing their motions

1 for summary judgment.

2 THE COURT: Well, we already have motions  
3 on file, and I would, you know -- I mean, if we can get  
4 to a place where a ruling makes sense on a very narrow  
5 issue like the validation of this QBD, then I would like  
6 to get that done. Those are my main concerns up front  
7 or, you know, getting a ruling maybe on that and then  
8 getting a clear answer to the question of Carl's  
9 Brunsting's authority and status as the administrator.  
10 And I don't know -- you know, I'm going to have to rely  
11 on you guys to bring that --

12 MS. BAYLESS: Well, he's resigned, Your  
13 Honor.

14 THE COURT: Oh, he has resigned?

15 MS. BAYLESS: Yes. That is what prompted  
16 the fight over who would succeed him which then resulted  
17 in the temporary administrator being appointed. He is  
18 no longer -- that's why I'm not involved --

19 THE COURT: That's right.

20 MS. BAYLESS: -- in the district court  
21 case.

22 THE COURT: I'm remembering that now.

23 MS. BAYLESS: He's resigned.

24 THE COURT: Okay. Well, we need to work  
25 out -- because none of this can really go forward



1 without an administrator, can it?

2 MS. BAYLESS: Right. Well, I mean, it  
3 could go forward, but then a temporary administrator,  
4 whoever it is, is going to have to rely on what  
5 everybody else did or we're going to have to start over.  
6 So, I mean --

7 THE COURT: And then we're going to get  
8 back to the issue of how we're going to get that person  
9 paid because it's going to need to be a third party, and  
10 who in the world would want to jump into this?

11 MS. BAYLESS: Right. And I think that's  
12 partly what had you, I believe, sending us to mediation  
13 before there was a federal RICO case filed which stopped  
14 all that mediation; but frankly, as much as -- I mean,  
15 I'm here; I'm the one who set this motion. As much as I  
16 want this case to move forward, it has moved forward in  
17 the right way. And to just come in and say - well,  
18 okay, we're going to go to trial in June when we have no  
19 temporary administrator, we don't know what the status  
20 is of transfer or not transfer of that case, and that  
21 case needs to be dealt with by the temporary  
22 administrator and is going to probably impact their  
23 ability to do things under the time table that's set for  
24 this case, I mean, it's another -- anyway...

25 THE COURT: There are a whole bunch of

1 bright lawyers in this room; what is your suggestion for  
2 dealing with someone to have authority on behalf of the  
3 estate?

4 MR. MENDEL: I think we need to get a  
5 temporary administrator on board. I think the Court  
6 needs to make a decision about the district court case -  
7 either they're going to stay over there in district  
8 court or it's going to come over here. So, maybe what  
9 we ought to do is come back in two weeks and argue that  
10 motion. Mr. Johnson and his colleagues can come over,  
11 and this side can come back. We can final-lock it. If  
12 they're going to be in the case, finalize a docket  
13 control order on that date, reset, and maybe we can  
14 reach out. I don't know if Mr. Lester would come back,  
15 but we can inquire as to who might express an interest  
16 in possibly serving as an administrator and try and  
17 resolve all of that in two weeks.

18 THE COURT: The last time we went through  
19 this discussion, we got locked up on who is going to pay  
20 the administrator.

21 MR. MENDEL: I think the trust should pay  
22 the administrator.

23 MR. SPIELMAN: I was just going to mention  
24 that while I was reading, I may have missed everyone  
25 saying it.

1                   On Page 8 of Mr. Lester's report, he says:

2                   "A motion to transfer the district court  
3 matter to the probate court where both estates are  
4 pending, has also been filed but not yet ruled upon."  
5 So, I don't know if that's what you guys were talking  
6 about while I was reading, but it looks like there's  
7 something in this courtroom that hasn't --

8                   THE COURT: That's right.

9                   MR. MENDEL: It was here in March.

10                  THE COURT: That's what we were hearing in  
11 March, I think and --

12                  MR. MENDEL: That's correct; that was part  
13 of it. It was a status conference.

14                  MS. BAYLESS: It was sort of like this,  
15 Judge; we started out doing one thing, and we ended up  
16 covering a whole bunch of things. And, you know,  
17 unfortunately, then we come back, and we're kind of at  
18 the same place --

19                  THE COURT: Would you guys like to sit  
20 down?

21                  MS. CAROLE BRUNSTING: If I can say  
22 something, too.

23                  I'm Carole Brunsting. I'm Pro Se. I'm  
24 one of the beneficiaries.

25                  But I guess my concern as well is - it



1 just sounds like we're going to restart; we're going to  
2 go right down the same path.

3           If you really look at what's being fired  
4 [sic] her, we're going to surpass that, I know, in legal  
5 fees. And I've actually done my best to try to be a  
6 mediator to some of the parties just to find out - what  
7 would it take for you to just stop doing this or drop  
8 this part of it or what is it you want? I've even tried  
9 that; unfortunately, I've been unsuccessful not because  
10 of the Plaintiffs but just because I never seem to get  
11 what it is they're asking for. And so, this has just  
12 become a little frustrating because from my point of  
13 view, my parents put this trust in place so we could  
14 avoid probate court, and we've been here for seven,  
15 eight years now. And I lose track of what we're  
16 fighting over. And I guess I really don't understand  
17 who is it that can decide if this QBD is null and void.  
18 There's got to be someone, but it seems to be in my  
19 mind - I'm an accountant - seems to be very black and  
20 white; but it seems like it's a gray area, and I'm not  
21 sure I understand that because from my parents' point of  
22 view - this was very black and white for them because  
23 they talked about it all the time. So, I'm really  
24 struggling trying to figure out why some of these things  
25 can not be ruled on so we can just move on because it

1 sounds like we're getting ready to go right down that  
2 same rabbit hole we've been down three or four times,  
3 and there's a cost to that.

4 THE COURT: Yeah. Well I'm, you know, I  
5 would like to, as you said, put some structure to this  
6 case. I would like to be able to address that specific  
7 issue regarding the QBD early on if possible because I  
8 do think that that would help move things along.

9 MS. BAYLESS: You have my motion, Judge.

10 THE COURT: Yeah, but I struggle a little  
11 bit with whether or not I can go forward on the motion  
12 when I don't really have -- Carl's not really here, is  
13 he?

14 MS. BAYLESS: Well, and he wasn't involved  
15 in the document.

16 THE COURT: You don't have to stand.

17 MS. BAYLESS: Oh, okay. It's a force of  
18 habit. I mean, yes, he's -- I'm not sure what you mean  
19 about, "he's not really here."

20 THE COURT: Well, I mean, he's filing this  
21 as his role as administrator of the estate --

22 MS. BAYLESS: No. My motion is filed for  
23 him, individually, through his attorney-in-fact. There  
24 is not an estate issue. I'm not doing anything, and  
25 Carl's not doing anything on behalf of the estate. He

1 has resigned. He's not administrator. This is his  
2 issue as beneficiary.

3 THE COURT: Individually.

4 MS. BAYLESS: So, I mean, I can't -- it  
5 seems to me there are a couple of things. Even if a  
6 determination is made that there is a fact issue, you  
7 know, it seems like there could be some direction given  
8 in an order what those fact issues are so that the  
9 parties can focus on that, perhaps, and then bring back  
10 to the Court what is needed to try to resolve that  
11 issue. It may be that it can't be resolved. If you  
12 truly think there are fact issues that are going to  
13 require testimony from witnesses, that's normally going  
14 to mean a trial. I mean, how many times do you resolve  
15 something like that in a summary judgment? Even if you  
16 have the deposition, somebody's going to say something  
17 else in the deposition. So, you know, if you determine  
18 that this really can't be done on the face of the  
19 documents without testimony from fact witnesses - and  
20 Carl wouldn't be one of those anyway because he was not  
21 involved - then I don't -- you know, we're going to be  
22 trying that issue. But I guess if everybody knows  
23 that --

24 THE COURT: Well, it sounds like the other  
25 side, and I don't want to put words in your mouth, but



1 has indicated that that's something that can be decided  
2 on summary judgment, ultimately; is that fair?

3 MR. MENDEL: Ultimately. But my  
4 recollection of the pleadings is that there's been a  
5 challenge as to Nelva's capacity which would call into  
6 question whether or not what she -- whether the QBD was  
7 valid at the time of inception. And we still have the  
8 empty chair with regard to who is going to fill in the  
9 administrator's role and --

10 MS. BAYLESS: Can I? I mean, maybe this  
11 is crazy, Judge, but I hate to bring up the "M" word  
12 again but, you know, people have now waited -- I mean,  
13 Carole is an example. Carl certainly needs his trust.  
14 Carole needs -- I would assume Amy and Anita need their  
15 trust. I don't know what Candy needs other than to  
16 fight with everybody. But, you know, maybe --

17 THE COURT: You know, I said back at that  
18 status conference in March that it would be really nice  
19 if everybody could get together and try to reach an  
20 agreement through mediation, and if you had the right  
21 mediator, maybe you could get there. I'm now a little  
22 reluctant to get anyone else involved who might become a  
23 target through this litigation.

24 MS. BAYLESS: Right.

25 MR. MENDEL: Judge, I don't -- I'm fine

1 with a mediation. You know, I think the Court strongly  
2 suggested, and everybody took the hint, that we needed  
3 to go do this. I think it needs to be a flat-out court  
4 order with a dropdead - this is your mediator; this is  
5 your deadline to get it done.

6 MS. CAROLE BRUNSTING: I disagree.

7 THE COURT: Why do you disagree?

8 MR. MENDEL: But -- let me add the other  
9 part to that.

10 I still want a trial date because we  
11 didn't have a trial date back then; and so, if that  
12 mediation is not successful, I don't want to come back  
13 down here and get a trial date. I want us to define  
14 what, as you said, the structure of moving forward; and  
15 if it doesn't settle - it doesn't settle, but we're  
16 going to go propound the discovery we want, seek the  
17 testimony that we want with or without the mediation. I  
18 mean, so we can have a fall mediation date; I'm totally  
19 fine with that, but I still want a date.

20 MS. BAYLESS: I mean, Carole has just said  
21 she's been trying to kind of mediate with people and get  
22 this moving forward, but now she's saying she doesn't  
23 want. So, can you explain?

24 MS. CAROLE BRUNSTING: My concern with  
25 mediation is I have such a bad taste in my mouth with

1 the mediation that took place four or five years ago and  
2 because of all of the parties involved. If you were  
3 talking maybe two or three people, you might have a  
4 chance. Because you're talking five, and because nobody  
5 really knows -- and I guess the way that they're set up  
6 to where everybody's separated and nobody knows what the  
7 other one is talking about. And, really, people in my  
8 family are fairly intelligent, and I think they kind of  
9 figured that out. But it's just, in my mind, I'm  
10 sitting there, and I'm thinking I don't even know why  
11 I'm there because I'm struggling with understanding even  
12 why we're here and what my role is in all of this. And  
13 but to me, too, because, again, everything is kind of  
14 black and white - nothing seems to ever get ruled on  
15 here, so I can never resolve anything in my own mind  
16 because I'm like -- I'm the kind of person, I'm  
17 thinking - okay, if the QBD is null and void, okay, that  
18 tells me how to go forward. If it's not null and void,  
19 that tells me how to proceed because I'm trying to be  
20 right not wrong.

21                   And the same thing with these  
22 distributions that took place in 2011 because I received  
23 one. When I found out that it was possibly it was done  
24 improperly, but I've been told by the mediator - mine  
25 was not; mine was done differently. But I offered to



1 return it. I was going to just return it. If it was  
2 done improperly, fine, I didn't have a problem with just  
3 returning it so we can move on because I was afraid that  
4 after reading books about what can happen in cases like  
5 this that go on and on and on where people end up with  
6 nothing, I was just trying to mediate it from the  
7 beginning of --

8 THE COURT: Well, so you have a bad taste  
9 from the last mediation and therefore you don't want to  
10 try that again.

11 MS. CAROLE BRUNSTING: I'm afraid to try  
12 it again.

13 THE COURT: So, if you put yourself and  
14 all of your siblings in one room, what do you think  
15 would happen?

16 MS. CAROLE BRUNSTING: One room might be  
17 better than separating everyone because after speaking  
18 with some of them afterwards, I found out that people  
19 were being told different things and --

20 THE COURT: Well, I've seen some of the  
21 emails that have gone back and forth between the  
22 parties, and they're not nice.

23 MS. CAROLE BRUNSTING: No, they're not.

24 THE COURT: So, I can see where a mediator  
25 might have problems putting everybody together to try to

1 have a different structure to mediation. And I'm not  
2 saying, you know, I'm not going to control how a  
3 mediator handles their mediation. I know that a lot of  
4 mediators have different styles, and some styles work  
5 with certain parties and some don't; and in a case like  
6 this, I would want to have -- and that's why I suggested  
7 Judge Davidson because he has a very strong personality,  
8 and he would have control, I guess, of the mediation.

9 MS. CAROLE BRUNSTING: But I think the  
10 sticking point is people want to know - is it valid? Is  
11 it not valid? Before you can agree to anything. What  
12 am I agreeing to? Because if it's not valid, then  
13 that's one thing, and that's what they want to know. If  
14 we've gone this far in fighting all these points --

15 THE COURT: And I get that it's real black  
16 and white to you, and you have your opinion about how,  
17 you know, that should be ruled upon; but procedurally,  
18 if we don't jump through the hoops that we need to jump  
19 through to get that decision made, then it's going to go  
20 up on appeal, and it's going to be an ongoing fight. I  
21 mean, that might be the destiny of this case anyway. I  
22 don't know. But I think that we have to jump through  
23 some procedural hoops to get to that ruling, and I'd  
24 like to have as clean a ruling as possible. I do think  
25 that we could get to a summary judgment ruling on a very

1 narrow issue related to those documents. And I'd like  
2 to, you know, look at that.

3 COURT'S RULING:

4 THE COURT: I'm at the end of the hour  
5 that I slotted in this case. As I recall, this case  
6 always takes a lot of time.

7 And so, I need to -- I think what I'd like  
8 to do is go ahead and grant the continuance. I want to  
9 give us a little more time, but I don't want to put this  
10 issue off forever. So, let's try to continue your work  
11 to try to get dates pinned down for a docket control  
12 order. And I'm happy to address that on submission.  
13 Even if you can't get an agreement from everybody, I  
14 think that we need to get a trial date set. So, if you  
15 would work with your co-counsel and include Ms. Curtis.  
16 I know that she's not here today. But if you could let  
17 her -- make her aware that we're circulating a docket  
18 control order. It won't be agreed. Don't call it,  
19 "agreed," and we'll get it on the docket, and then you  
20 know, we need a starting point.

21 I'm sort of inclined to push it out a  
22 little further than June, and that's just because I want  
23 to be able to get, you know, make sure we have courtroom  
24 space and that we have sufficient time to get everything  
25 done and we're not resetting it and punting it further



1 down the line. Does anyone disagree with that?

2 MR. SPIELMAN: The only thing I would say,  
3 Judge, and of course, I'd have to consult with my client  
4 as well, but I don't -- she's a -- she has been a school  
5 teacher. I know she does some year-round work, too; so,  
6 I don't know that one month is better than the other.  
7 But I know that in the past, she has told me that a  
8 summer setting would be better for her.

9 THE COURT: Got it. Okay. Well, if you  
10 want to do -- if you want to shoot for the last week of  
11 June, I believe that's open, and we can do that. So,  
12 work together and try to backup some dates from that.  
13 Try to come with a date when we can reset this motion  
14 for summary judgment; and in the meantime, I'll be  
15 looking at this and talking to Judge Butts about it and  
16 see if we can narrow it to an issue that maybe we can  
17 get a ruling on. I want --

18 With regard to the discovery, do we need  
19 to put anymore stringent deadlines in place other than  
20 just the discovery deadline or do you think you're going  
21 to be able to move forward and get the discovery done  
22 that's necessary?

23 MR. MENDEL: There needs to be a deadline.

24 THE COURT: On the DCO, there will be a  
25 deadline, but I mean, some cases require a little

1 more --

2 MR. MENDEL: A little more structure? I  
3 guess we should visit about that.

4 One of the things that's going to impact  
5 that, which I would still like to come back in a couple  
6 of weeks, is to address that motion to transfer. I  
7 think that needs to be resolved because that's going to  
8 impact the case.

9 THE COURT: Is it fair to call the  
10 district court case a "malpractice case"?

11 MR. JOHNSON: I guess so. Our position  
12 would be - it would make more sense to get the estate  
13 representative appointed first who can very well step in  
14 and say - that case is frivolous; dismiss it anyway  
15 before it gets transferred.

16 THE COURT: We need an administrator.

17 MR. MENDEL: That's the second point. So,  
18 why don't we come back in two weeks with the Court's  
19 permission and address the issue of the administrator,  
20 and I guess that administrator can evaluate whether or  
21 not that district court case goes forward. We have an  
22 empty chair we need fill.

23 MS. BAYLESS: I guess the other, unless --  
24 well, that didn't accomplish much before. I realize it  
25 needs to be done, but the other way, I guess, to deal

1 with that so that the case can continue moving forward,  
2 be to sever the estate's claims in this case. And then  
3 if some of these people -- if stuff gets flushed out in  
4 discovery, or whatever, we come back with motions that  
5 relate to the beneficiaries' claims, we leave the estate  
6 out of it...

7 THE COURT: Who filed the motion to  
8 transfer?

9 MS. BAYLESS: I think I did.

10 THE COURT: And who is opposed to it?

11 MS. BAYLESS: They are.

12 THE COURT: You're the only one opposing  
13 it? Nobody else is -- are you guys in agreement that it  
14 should be transferred?

15 MS. BAYLESS: I think Candy may have also  
16 filed a motion to transfer.

17 MR. MENDEL: I think it should be in the  
18 case. I think it should be here.

19 MS. BAYLESS: I think they're opposed.  
20 Even if it's transferred, they're opposed to it being in  
21 the same case, am I right?

22 MR. JOHNSON: I don't know off the top of  
23 my head.

24 THE COURT: I think it would be  
25 transferred as a different sub docket.



1 MS. BAYLESS: Anyway, it could be that the  
2 estate's -- again, that might weigh in favor of the  
3 severance of the estate's claims into a different action  
4 or with that action. I don't know. But I don't see how  
5 we get a trial setting without an administrator if the  
6 estate is still in this case.

7 THE COURT: Okay. I want a trial setting  
8 just because I need a deadline.

9 MS. BAYLESS: I understand the point.

10 COURT'S FURTHER RULING:

11 THE COURT: So, let's go ahead and get it  
12 set for trial just so that we have something out there  
13 to target. I don't want to set the hearing yet on the  
14 transfer; I want to be able to talk to Judge Butts about  
15 it first or regarding the administrator. So, let me  
16 visit with Judge Butts about that, and I'll circle back  
17 with you guys and see when we can get those issues  
18 scheduled.

19 And in the meantime, if you could work on  
20 a DCO and some deadlines with that last week of June in  
21 mind, I would appreciate that. The pretrial would need  
22 to be probably the prior week. We can do it the  
23 prior -- I think we can do it the prior Monday at 2:30.

24 MS. BAYLESS: Is June the only -- with the  
25 idea of a little bit more time to sort some of these

1 issues out, is there like an August date?

2 THE COURT: I don't know what time she'd  
3 be going back to class, it's probably mid-August; would  
4 that be fair? I have some teachers that start like the  
5 second week of August.

6 MS. BAYLESS: Or July.

7 MR. SPIELMAN: It's San Antonio, so I'm  
8 not sure.

9 MR. MENDEL: The last week of July starts  
10 on the 29th and runs through August 2nd.

11 THE COURT: How much time do you think  
12 pretrial would take in this case? I probably need to  
13 give you a full afternoon for pretrial.

14 MS. BAYLESS: I predicted an hour for this  
15 hearing, so don't ask me.

16 THE COURT: Okay.

17 MR. MENDEL: I'm deeply concerned about  
18 the last week of July because if this case rolls over  
19 into the following week, I've already paid money for a  
20 vacation with my wife.

21 THE COURT: Okay. We're not going to do  
22 that. Then let's -- can we back it up to two weeks  
23 prior to that?

24 MR. MENDEL: That's fine with me.

25 THE COURT: Anybody else have a problem

1 with that?

2 MS. BAYLESS: Sometime in mid-July?

3 THE COURT: Yeah. I don't want to back it  
4 up too far because then we're going to be into the 4th  
5 of July holiday.

6 MR. MENDEL: What if we had a setting the  
7 week of the 15th and pretrial on the 8th?

8 THE COURT: Okay. I don't want to put you  
9 in on a 2:30 setting; I'm afraid we'll be here 'til  
10 midnight. So, let's do it on the 11th, 9 a.m. So, it's  
11 July 11th, '19, 9 a.m. for pretrial. And then your  
12 pretrial order would be due the Friday before that which  
13 is --

14 MS. BAYLESS: The 4th.

15 MR. MENDEL: The 5th. Why don't we move  
16 it to the 8th so that we're not into the 4th of July.

17 THE COURT: Okay. That's fine. So, let's  
18 just say by noon.

19 MR. MENDEL: That's fine. And then  
20 pretrial conference on 7-11 at 9 a.m.

21 THE COURT: And then 7-15 was our trial  
22 date.

23 What I've been doing with these cases is  
24 calling the parties about a month out. I think I'm  
25 going to have a better chance of actually logging down a



1 courtroom if I can, if I can announce the case is  
2 trial-ready 30 days prior to the setting so keep that in  
3 mind. I'm going to be calling five weeks prior to and  
4 asking if we're going to be trial-ready because if I can  
5 make that announcement, I have a pretty good chance of  
6 getting a courtroom. So, work with me on that.

7 MS. BAYLESS: So, are you just going to go  
8 ahead and issue a docket control order based on this  
9 date -- I mean, don't you have what you need to --

10 THE COURT: For the DCO? No, I need all  
11 of the discovery dates.

12 MR. MENDEL: This is to help us start.  
13 We'll fill this in and start circulating it.

14 MS. BAYLESS: Okay.

15 THE COURT: So, how long do you think you  
16 need to sort out these dates and get that back to me?

17 MR. MENDEL: Is a week okay?

18 THE COURT: That's fine. So, by the end  
19 of -- let's just say by the end of next week, you can  
20 email that document to me; I'll confirm all the dates  
21 and get it on the calendar and get it signed. And like  
22 I said, you know, circulate it to everyone.

23 And consider mediation. You know, I'm  
24 going to need a mediation deadline. So, I know that you  
25 don't want to go down that route but --

1 MS. CAROLE BRUNSTING: I'm not saying  
2 that, it's just you can't just say go to mediation. I  
3 really think if you had it spelled out that this is what  
4 mediation is because last time we were just tossed in a  
5 room, somebody came to me, shoved a number in my face  
6 and that was my mediation. And nothing's explained;  
7 nothing was organized. It was just -- and also, the  
8 mediator seemed to have already made up his mind as to  
9 who he liked/he didn't like, and I was like, "this is  
10 mediation?" So, I think if it was a bit more structured  
11 and people knew a little bit of what was going on and  
12 people were talked to in advance, we'd have a better  
13 idea maybe so; but I'm just basing everything off of  
14 what happened the last time.

15 THE COURT: Okay. Well, maybe what we  
16 need is an order to mediate as you guys have suggested,  
17 and if you can maybe, I don't know, talk about some  
18 rules if you want to put some guidelines in your order,  
19 I can consider that. But as I've said, I don't want to  
20 put a whole lot of restrictions on our mediator because  
21 mediators have different styles. And if you need us  
22 to -- I mean, probably, you're not going to reach an  
23 agreement again regarding the mediator; does anyone  
24 object to going back to Judge Davidson if he will now  
25 agree to handle it?

1 MR. SPIELMAN: Well, Judge Davidson was  
2 not the first mediator that did the mediation.

3 THE COURT: I know. But he was the one  
4 that we suggested and --

5 MR. SPIELMAN: I think everybody had  
6 agreed to Judge Davidson back then, so I wouldn't see --

7 MR. MENDEL: We had a date.

8 MR. SPIELMAN: -- I wouldn't see a need to  
9 reopen that issue.

10 THE COURT: Okay.

11 MR. SPIELMAN: But I would ask -- I want  
12 to get a quick clarification.

13 If we're going to try to get the DCO  
14 worked out by the end of the week, and if we can't reach  
15 consensus, we're emailing it in, are we putting it on a  
16 submission docket if there's no consensus or just  
17 emailing?

18 THE COURT: No, you're just emailing it  
19 in. I do not anticipate that there's going to be  
20 consensus. I'm giving you some latitude to not have  
21 conflicts with your schedules, and I'm just going to  
22 have to order it.

23 MR. SPIELMAN: Okay. Thank you.

24 COURT'S FURTHER RULING:

25 THE COURT: Okay. Should I sign -- I'm



1 going to go ahead and sign the order granting the  
2 continuance for today's hearing. And as you guys talk  
3 about your deadlines, if you would get back to me with  
4 some suggestions. And I'm not saying that we're going  
5 to accept them.

6           If you can provide some suggestions for  
7 when we can get this back on our calendar, I'd  
8 appreciate that. And if it has to be in the DCO, just  
9 shoot me your ideas by email, and we'll think about  
10 that; fair enough?

11           MS. BAYLESS: Shoot you our ideas by email  
12 about what?

13           THE COURT: About when we can get the  
14 motion for summary judgment back on the calendar. How  
15 long do you think we're going to need to be ready to  
16 make a ruling on some of that.

17           MR. MENDEL: Okay.

18           THE COURT: Okay. I'm going to strike the  
19 language regarding the dispositive motions in the docket  
20 control order, and I'm just going to leave that open  
21 and wait to hear back from you; is that fair or?

22           MR. MENDEL: That's fine, Judge. You're  
23 striking the last sentence?

24           THE COURT: Uh-huh. I don't want to be  
25 limited to whatever we put into the docket control

1 order; I want to be able to address it when we're ready  
2 to address it.

3 MR. MENDEL: That's fine.

4 THE COURT: Okay. Have you had a chance,  
5 Ms. Bayless, to see this order? It's pretty  
6 straightforward. It just continues. I've stricken the  
7 last sentence. Fair enough?

8 MS. BAYLESS: That's fine.

9 THE COURT: Okay. And stay in touch with  
10 me, and let's try and get this moving.

11 MR. MENDEL: Okay. Thank you, Judge.

12 THE COURT: Anything else we need to  
13 address today?

14 MR. MENDEL: No.

15 THE COURT: Okay. Thank you.

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1 The State of Texas )  
 2 County of Harris )

3  
 4 I, Hipolita Lopez, Official Court Reporter in and  
 5 for the Probate Court Number Four of Harris County,  
 6 State of Texas, do hereby certify that the above and  
 7 foregoing contains a true and correct transcription of  
 8 all portions of evidence and other proceedings requested  
 9 in writing by counsel for the parties to be included in  
 10 this volume of the Reporter's Record, in the  
 11 above-styled and numbered cause, all of which occurred  
 12 in open court or in chambers and were reported by me.

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

16 I further certify that the total cost for the  
 17 preparation of this Reporter's Record is \$370.50  
 18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 23rd day of  
 20 September, 2018.

21  
 22 /s/ Hipolita G. Lopez  
 HIPOLITA G. LOPEZ, Texas CSR #6298  
 23 Expiration Date: 12-31-18  
 Official Court Reporter  
 Probate Court Number Four  
 24 Harris County, Texas  
 201 Caroline, 7th Fl.  
 25 Houston, Texas 77002