

|                         |   |                       |
|-------------------------|---|-----------------------|
| Candace Louise Curtis   | § |                       |
|                         | § | 412249-402            |
| v.                      | § | Feb 27, 2012          |
|                         | § |                       |
| Anita Brunsting et al., | § |                       |
| <hr/>                   |   |                       |
| IN RE: THE ESTATE OF    | § | PROBATE COURT         |
|                         | § |                       |
| NELVA E. BRUNSTING,     | § | NUMBER FOUR (4) OF    |
|                         | § |                       |
| DECEASED                | § | HARRIS COUNTY, TEXAS  |
|                         | § | 412,249 April 2, 2012 |
|                         | § |                       |
|                         |   | <b>CLOSED</b>         |
| <hr/>                   |   |                       |
| Carl Henry Brunsting    | § |                       |
| Individually            | § |                       |
|                         | § | 412,249-401           |
| v.                      | § | April 9, 2013         |
|                         | § |                       |
| Anita Brunsting et al., | § |                       |
| <hr/>                   |   |                       |
| Executor for Estate of  | § |                       |
| Nelva Brunsting         | § | 412,249-401           |
| v.                      | § | April 9, 2013         |
|                         | § |                       |
| Anita Brunsting et al., | § |                       |
| <hr/>                   |   |                       |

**ORDER**

1. Before the Court are a number of dispositive motions including a Plea in Abatement and a Plea to the Jurisdiction. Also before the Court is the issue of a vacancy in the office of executor.
  
2. The record indicates that the suit pending in the Harris County 164th Judicial District Court is a malpractice suit brought by the Estate of Nelva, Brunsting which requires this court to appoint an executor.

3. However, the record also indicates that ancillary cause no. 412,249-401 pending in this Court was brought in the name of Carl Henry Brunsting (Carl) in his individual capacity and as executor for the Estate of Nelva Brunsting, but that Carl resigned the office of executor in February 2015 due to diminished capacity.

4. It appears that the office has remained vacant with the limited exception of the appointment of a Temporary Administrator charged with reporting to the Court on the merits of the Estate's claims. The Court has reviewed the report and not only finds it unresponsive to the order, but finds the Court in the same position it was in before the temporary appointment was made.

### **The Will of Nelva Brunsting**

5. The Court has examined the Will of Nelva Brunsting and made a cursory examination of the Trust and finds that the only devise or legatee of the Estate is the Brunsting Family Trust. The five Brunsting siblings are the only beneficiaries of the family Trust.

### **Administration**

6. The Will names Carl Henry Brunsting Executor, with Amy Brunsting (Amy) designated as the first alternate and Candace Curtis (Curtis) named as the second alternate.

7. The Order appointing Lester indicates a qualified declination was agreed to by Amy and Candace and that the declinations to serve expired with the Order on January 30, 2016, 180 days after it was issued. The office has remained vacant since.

### **The Demand to Make More Definite and Certain**

8. The Court agrees that the issue of who will serve as the successor executor for the Estate of Nelva E. Brunsting must be resolved prior to resolving the claims against these Defendants. This Court also agrees that those claims must be more clearly stated before this Court can properly evaluate the issues and before a prospective successor can evaluate the obligations that they would be asked to accept.

### **The Estate**

9. In reviewing the approved inventory and list of claims, the Court finds no mention of any claims belonging to the Estate pending before this Court.

10. It is a proposition too plain to argue that where there are rights there must be corresponding obligations, and where there are obligations there must be corresponding rights. From this relationship it is clear that the role of an Executor must be clearly defined according to the claims.

11. Because Carl has no individual standing in the probate, his individual claims as a trust beneficiary need to be distinguished from any claims Carl may have brought before this Court in his capacity as Executor for the Estate.

12. The Court further finds that attorney Bobbie G. Bayless, having drafted the Petition, would be in the best position to know the claims she filed and would be the obvious choice for clarification and that will be the Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Bobbie G. Bayless is to bifurcate the claims belonging to the Estate as distinguished from claims belonging to Carl as a beneficiary of the trust, and is to itemize the remedies each plaintiff is seeking in regard to each claim. If none, say none.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the bifurcation of claims is to be completed and filed with the court within 21 days of this date: \_\_\_\_\_, 2019.

---

HONORABLE JAMES HORWITZ  
Harris County Probate Court No. 4