Subject: Fw: 412249-401 Estate Of Nelva Brunsting
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 10/12/2018 10:31 AM
To: Rik Munson <blowintough@att.net>
X-Account-Key: account1
X-UIDL: AArPigpdPxqLW8DaZwpUiBOvxLk
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
X-Apparently-To: blowintough@att.net; Fri, 12 Oct 2018 17:31:19 +0000
Return-Path: <occurtis@sbcglobal.net>
Received-SPF: none (domain of sbcglobal.net does not designate permitted sender hosts)
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Fri, 12 Oct 2018 10:31:18 -0700
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Received: from sonic.gate.mail.ne1.yahoo.com by sonic303.consmr.mail.ne1.yahoo.com with HTTP;
Reply-To: Candace Curtis <occurtis@sbcglobal.net>
Message-ID: <1018211077.257240.1539365472047@mail.yahoo.com>
In-Reply-To: <00b801d46250$964188d0$c2c49a70$@grifmatlaw.com>
References: <f439c4b810284d228df22829b8446d3e@NN-DC-LW-MAIL07.naturalnetworks.us>
<00b801d46250$964188d0$c2c49a70$@grifmatlaw.com>
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Content-Length: 43265

----- Forwarded Message -----
From: Neal Spielman <nspielman@grifmatlaw.com>
To: 'Steve Mendel' <steve@mendellawfirm.com>; '"Comstock, Clarinda (Probate Courts)"' <Clarinda.Comstock@prob.hctx.net>; 'Bobbie Bayless' <bayless@baylessstokes.com>; 'Carole Brunsting' <cbrunsting@sbcglobal.net>; 'Candace Curtis' <occurtis@sbcglobal.net>
Cc: Neal Spielman <nspielman@grifmatlaw.com>
Sent: Friday, October 12, 2018 10:25 AM
Subject: RE: 412249-401 Estate Of Nelva Brunsting

Dear Judge Comstock –

I am following up on Steve Mendel's e-mail below in light of other responses to your e-mail of 10/8/18, particularly the e-mails of 10/10/18 from Carole Brunsting and 10/11/18 from

Bobbie Bayless (on behalf of Carl Brunsting).

First, there appears to be some confusion as to whether any party to this action is contesting Nelva Brunsting's capacity at the time she executed various documents, including without limitation: the Appointment of Successor Trustee and the Resignation of December 21, 2010; the Qualified Beneficiary Designation/Exercise of Power of Appointment dated June 15, 2010; and the Qualified Beneficiary Designation/Exercise of Power of Appointment dated August 25, 2010. This issue might be resolved if each party were ordered to stipulate in a writing filed with the Court, that Nelva Brunsting's capacity is or is not an issue.

Second, there appears to be some effort to disregard or discredit the content of the Report of Temporary Administrator Pending Contest. There is too much to be captured in e-mail about the problems this would create. However, one area of concern stems from the content set forth on Page 7 of the Report (No Contest Clause Provisions). Significantly, the Report concludes (a) "**in both documents** [*the August 25, 2010 Qualified Beneficiary Designation/Exercise of Power of Appointment* ***and*** *the January 12, 2005 Restatement of Brunsting Family Living Trust*] **the provision is well written"** and (b) "**[a] decision by the Court upholding either no contest provision might resolve all other issues.**"

Considering the content of the two no-contest clauses and the Report's observations about them, it becomes clear that the first issue to be considered before any other is the enforceability of the no-contest clauses. If claims asserted by Carl Brunsting and/or Candace Curtis trigger one or both no-contest clauses, then each has effectively "disinherited" themselves, and none of their claims or pleadings, including without limitation those presented by Carl Brunsting in his Motion for Summary Judgment and/or those presented by Candace Curtis in her First Amended Plea in Abatement are properly before the Court.

Until the no-contest clause issues are resolved, none of their Motions, Pleas, claims, etc. should be considered.

For things to proceed in this fashion, a Docket Control Order remains necessary and the discovery referenced by Mr. Mendel must proceed so that the parties can present arguments for or against the no-contest clause(s), whether based on issues of capacity or enforceability. Then and only then will it be proper to consider issues such as those raised by Carl Brunsting and Candace Curtis (and even then, only if the no-contest clauses are not enforceable for one reason or another).

I appreciate the Court's consideration of the issues raised above.

Very truly yours,
Neal E. Spielman
Griffin & Matthews

1155 Dairy Ashford, Suite 300
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nspielman@grifmatlaw.com
Please take a moment to visit our website at **www.grifmatlaw.com**

****
To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you (i) to avoid penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

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If you are not one of the addressees on this e-mail, the information contained in this e-mail is not intended for you, and please delete this e-mail immediately.
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From: Steve Mendel [mailto:steve@mendellawfirm.com]
Sent: Tuesday, October 09, 2018 2:37 PM
To: Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>; Bobbie Bayless <bayless@baylessstokes.com>; nspielman@grifmatlaw.com; Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>
Subject: 412249-401 Estate Of Nelva Brunsting

Dear Judge Comstock:

As you may recall, our office represents Co-Trustee Anita Brunsting, and Neal Spielman represents Co-Trustee Amy Brunsting. This correspondence represents a joint response as between myself and Mr. Spielman, on behalf of our respective clients.

First, the Co-Trustees want an oral hearing regarding Carl Brunsting's motion

for summary judgment.

Second, we would remind the court that it was discussed at the last hearing that certain discovery was important, including, but not limited to, evidence as to capacity and the academics of why the QBD was created, enforceable, and does not violate the trust provisions that predate the QBD, as referenced in Carl Brunsting's motion.

In this regard, we believe the following discovery needs to occur before Carl Brunsting's motion is set for an oral hearing:

1. Depose Candice Kuntz-Freed, and/or appropriate representatives of Vacek & Freed.

2. Greg Lester, the temporary administrator. However, if the parties will agree that Mr. Lester's report is admissible, then we see no need to depose Mr. Lester at this time. By admissible we mean, a waiver of all objections as to authenticity and hearsay. Notwithstanding the admissibility of the report, every party reserves the right to challenge, in whole or in part, the opinions and/or conclusions set forth in Mr. Lester's report.

3. Candace Curtis, who asserts that Nelva Brunsting lacked capacity.

4. Carole Brunsting who we understand had a reasonable degree of interaction with Nelva Brunsting and would have facts that relate to the capacity issue.

While there is other discovery that may be appropriate as to the foregoing issues, at present we believe the foregoing depositions are the minimum necessary to be completed before there is a hearing on Carl Brunsting's motion.

Further, we do not see any of the proposed dates as allowing sufficient time to complete the foregoing depositions. We, therefore, urge the court to issue a docket control order as to the entirety of the case, or at least an order that the foregoing named witnesses make themselves available for deposition between now and November 30, 2018.

Last, but not least, we will be filing motions that include, but are not necessarily

be limited to:

A. Obtain two different types of appraisals for the Iowa farm. One appraisal is for the value of the farm without regard to any division of the farm. The other appraisal would seek values if the farm was divided as equally as possible among the beneficiaries. The appraisals would assist with settlement negotiations among the parties.

B. Allocation of funds to pay for court reporters and videographers for the foregoing depositions.

Very truly yours,
Stephen A. Mendel

The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
steve@mendellawfirm.com

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From: Steve Mendel
Sent: Tuesday, October 09, 2018 1:52 PM
To: 'Bobbie Bayless'; Comstock, Clarinda (Probate Courts); nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
Subject: RE: 412249-401 Estate Of Nelva Brunsting

Judge Comstock:

Mr. Spielman and I will be sending a joint response within the hour.

Very truly yours,

Stephen A. Mendel

The Mendel Law Firm, L.P.
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Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
steve@mendellawfirm.com

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From: Bobbie Bayless [mailto:bayless@baylessstokes.com]
Sent: Tuesday, October 09, 2018 12:50 PM
To: Comstock, Clarinda (Probate Courts); Steve Mendel; nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
Subject: RE: 412249-401 Estate Of Nelva Brunsting

As far as I am concerned, the Court can consider my Motion for Partial Summary Judgment without further argument. It is a pretty straightforward motion, so I am willing to allow the court to proceed without a further hearing.

Bobbie G. Bayless
BAYLESS & STOKES
2931 Ferndale
Houston, TX 77098
713.522.2224
713.522.2218 (fax)
bayless@baylessstokes.com

From: Comstock, Clarinda (Probate Courts) [mailto:Clarinda.Comstock@prob.hctx.net]
Sent: Monday, October 08, 2018 3:53 PM
To: Steve Mendel; Bobbie Bayless; nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
Subject: 412249-401 Estate Of Nelva Brunsting

Judge Butts believes she is ready to consider the Motion for Summary Judgment which was continued at the last hearing.
Although a hearing on a motion for summary judgment is not required, she would like to give the parties the opportunity for oral argument, if desired.
The following dates may be available for an oral hearing on this Motion, assuming a courtroom can be made available:

Oct. 24th at 11am
Oct. 29th at 2:30pm
Nov. 19th at 2:30pm

Please respond to this email no later than the end of the day Thursday, Oct. 11th to advise whether you wish to have an oral hearing of the Motion for Partial Summary Judgment.
An oral hearing will be set on one of these dates should any party request a hearing.
If an agreement cannot be reached as to a hearing date by this Thursday, a date will be set by the court.
If no one requests a hearing by this Thursday, Judge Butts will rule without a hearing.

Regards,

Clarinda Comstock
Associate Judge
Harris County Probate Court 4
Clarinda.comstock@prob.hctx.net
832-927-1404