Subject: Fw: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 6/24/2016 8:43 AM
To: Rik Munson <blowintough@att.net>

sick, sick, sick
be sure to read down to where Drina and Bobbie are talking about forwarding it to me and deleting the rest of the email...

On Wednesday, March 25, 2015 6:23 PM, Drina Brunsting <drinabrunsting@sbcglobal.net> wrote:

FYI--Judge Butts' email to the attorneys:

Sent: Wednesday, March 25, 2015 3:19 PM
Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Dear Attorneys,

As you know, we met together on Monday, March 23rd for a status conference. At that status conference we discussed: 1) the district court case and whether a consensus could be reached that it should be transferred to Probate Court 4 (no consensus was obtained); 2) the Motion to Compel (modified order signed); and 3) Carl Brunsting's Application to Resign and the appointment of a successor personal representative.

This email is to discuss the appointment of a successor personal representative considering the fact that Carl Brunsting must resign. As you all know, the Will of Nelva Brunsting provides that Amy and then Candace shall serve as alternate executors to Carl. Normally, Amy would be appointed so long as she was qualified. However, Carl in both his individual capacity and in his capacity as the Executor of the Estate has filed suit against Anita, Amy, Carole, and Candace (Petition for Declaratory Judgment, for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, Together with Request for Disclosures, filed April 9, 2013 and as amended) in Probate Court 4. Consequently, it would likely be argued that Amy is unsuitable to serve given the conflict of interest, as she would have to pursue (or choose not to pursue), as successor Executrix, a claims filed against her individually and as trustee of several trusts. Though Candace is named as a defendant in the case pending in Probate Court 4, she appears to be a defendant only because her rights may be affected. In an effort to address the need for the appointment of a successor personal representative, short-circuit the process of sorting out claims of disqualification, and efficiently proceed with the administration of the estate, may I suggest that you all agree on the appointment of an independent third party as the successor personal representative?

Even if all agree that the appointment of an independent third party as successor administrator (or independent administrator) is advisable, the matter of paying such appointee remains difficult, as I understand the Estate of Nelva Brunsting contains little if any liquid assets. It was suggested that the assets of the Brunsting Family Living Trust, originally formed in 1996, (or its progeny) could be

used to fund the appointment of a third party administrator. In the Restatement of such trust, signed in 2005, on page 8-4, Art. VIII, Sec. D, Part 1, the Trustee is specifically authorized to pay "expenses of administering the surviving Founder's estate." The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), signed by Nelva E. Brunsting in 2010, appears to ratify the Trustee's authority to pay the administration expenses of the surviving Founder's estate, as such QBD did not appear to amend such provisions of the Restatement and provided at the bottom of page 36 that, "All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby." However, I do not have a copy of the document mentioned above in red; so, I cannot confirm that it did not amend the Trustee's authority to pay administration expenses of the surviving Founder's estate. At any rate, unless such authority was edited by the document mentioned in red, it seems clear that the Trustee may pay the administration expenses of the estate of Nelva Brunsting.

Considering that the Trustee seems to have the discretionary power to pay administration expenses directly, as far as I can see, all the talk about deemed distributions to children to pay such expenses and considerations related to spend thrift provisions (addressed by Ms. Thornton) and special needs provisions (which I brought up not knowing whether or not it could be an issue) may be moot.

I was informed that Ms. Wylie would not be an acceptable choice as administrator as far as Carl or Ms. Bayless is concerned. Ms. Bayless suggested both Fatima Breland and Sharon Stodghill as agreeable persons to serve as administrator. I am confident that both of these attorneys would make excellent administrators. It is my suggestion that the case proceed as follows:

1. The Trustee(s) agree to pay court approved fees and expenses of administrator (even if the administration in independent, the court is amenable to reviewing and approving fees if this will give the Trustee(s) more comfort in making disbursements from the trust).
2. The parties agree on the appointment of a particular person to serve as administrator and decide whether or not such person should serve independently, or the parties agree that the court shall appoint an independent third party administrator (dependent or independent).
3. The administrator would, among other things, respond to discovery requests, prepare an accounting, and evaluate and perhaps pursue claims in district court.

Thank you all for your consideration of this analysis and my suggestions. Please do not consider any of the statements herein to be an advanced ruling or finding.

Very truly yours,

Christine Butts
Judge, Harris County Probate Court 4
201 Caroline, 7th Floor
Houston, Texas 77002
(713)368-6767
http://www.co.harris.tx.us/probate/crt4/default.aspx
christine.butts@prob.hctx.net

When you do the reply, just erase everything until you get down to Judge Butts' email.

----- Original Message -----
From: Drinabrunsting
To: Bobbie Bayless
Sent: Wednesday, March 25, 2015 7:51 PM
Subject: Re: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

I would like for Candy to be able to read this but I dont want to forward your email. Should I cut and paste her email or leave Candy out?

Sent from my Samsung Epic™ 4G Touch

Bobbie Bayless <bayless@baylessstokes.com> wrote:
Just in Nelva's estate--not in the trusts.
----- Original Message -----
From: Drinabrunsting
To: Bobbie G Bayless
Sent: Wednesday, March 25, 2015 7:01 PM
Subject: RE: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Where did she get the notion that there are no liquid assets?

Sent from my Samsung Epic™ 4G TouchBobbie G Bayless <bayless@baylessstokes.com> wrote:We finally got this email from the judge about appointing an independent person and paying for their services.

----- Original Message -----
From: Butts, Christine (Probate Courts)
To: bayless@baylessstokes.com ; brad@mendellawfirm.com ; nspielman@grifmatlaw.com ; Darlene Smith (dsmith@craincaton.com) ; Jason Ostrom (jason@ostromsain.com) ; nicole@ostromsain.com
Cc: Comstock, Clarinda (Probate Courts)
Sent: Wednesday, March 25, 2015 3:19 PM
Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

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Christine Butts
Judge, Harris County Probate Court 4
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Houston, Texas 77002
(713)368-6767
http://www.co.harris.tx.us/probate/crt4/default.aspx
christine.butts@prob.hctx.net