UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	*	Civil No. H-12-592
	*	
VERSUS	*	Houston, Texas
	*	April 9, 2013
ANITA KAY BRUNSTING, et al	*	9:50 a.m.

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
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For the Defendants:

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Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?

MS. CURTIS: Yes, family farm in Iowa.

THE COURT: That was sold?

MS. CURTIS: No, it was not.

THE COURT: What's on the farm that's increasing these prices? What are they harvesting?

MS. CURTIS: Corn and soybean.

THE COURT: Is that for profit or just simply --

MS. CURTIS: To my understanding we have a lease with the farmer.

THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.

MS. CURTIS: Yes.

THE COURT: Those assets or that money goes into the estate?

MS. CURTIS: I believe so.

THE COURT: And that accounts for some of the increase, as you understand them?

MS. CURTIS: Yes.

THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?

MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter