

I. REPLY POINTS

Between August 18, 2018 and October 19, 2018, Curtis filed one (1) Plea to the Jurisdiction and four (4) Pleas in Abatement (collectively, the “Pleas”). None of these Pleas have been set for hearing or submission. Nevertheless, because the Pleas are entirely without merit and serve no legitimate purpose, and insofar as Amy’s Motion for Clarification and/or Motion to Dismiss references the status of Curtis’ claim, the following analysis shows that the Pleas are not worth of further discussion, and should not be a basis by which Curtis can further delay this proceeding.

This Court has subject matter jurisdiction over the Brunsting Trust Documents.

Through her filings, Curtis seems to be suggesting that this Court does not have subject matter jurisdiction over her claims (as presented in her live pleading – Plaintiff’s Second Amended Petition). Her claims are asserted against, and relief is sought from Amy, Anita and Carole.

Section 32.006 of the Texas Estates Code confers a statutory probate court with jurisdiction over claims by or against a trustee. This Court’s jurisdiction is further recognized by Sections §115.001(a) and §115.001(d)(1).

If Curtis is truly suggesting that this Court lacks subject matter jurisdiction over the claims asserted against Amy, Anita and Carole, her position is contrary to law. To the extent the Pleas suggest that this Court does not have subject matter jurisdiction, then all requested relief related thereto should be denied.

No other Court has dominant jurisdiction over the matters pending in the 401-Proceeding.

Curtis also seems to suggest that “dominant jurisdiction” requires her case to be returned to Southern District of Texas – Houston Division. Her claims in this regard are likewise incorrect and without merit.

Dominant jurisdiction theory requires the presence of four (4) distinct elements, and has

three (3) recognized exceptions. The four (4) elements are:

1. Movant's Suit was Commenced First;
2. First Suit Filed in County of Proper Venue;
3. The First Suit is Still Pending in the other Court; and
4. Same Parties & Dispute.

Curtis' efforts to invoke dominant jurisdiction fail based on elements (3) and (4). The First Suit is the 2012 Federal Proceeding. That First Suit is no longer pending in the Southern District of Texas. The Civil Docket sheet for the 2012 Federal Proceeding describes the case as "Closed, Remanded" and identifies its "Date Terminated" as May 15, 2014. Curtis cannot establish Element No. 3, and thus cannot prevail under her dominant jurisdiction theory.

Curtis also seems to invoke dominant jurisdiction theory as to Carl's District Court Proceeding, which names Candace Kuntz-Freed and Vacek & Freed as its only defendants. If this is in fact her intent, the theory fails due to Element No. 4.

Element No. 4 focuses on an identification of the parties participating (or not participating) in the competing claims. The District Court Proceeding is much more than just a "malpractice action" as it has been described by some. For example, it includes a conspiracy claim which suggests that Amy and Anita are co-conspirators.

The notion that the District Court Proceeding has dominant jurisdiction over the 401-Proceeding fails because Amy, Anita, Carole, Curtis, and even Carl (in his individual capacity) are not parties to it. Freed and her firm cannot have been involved in a conspiracy with anyone until and unless there is a determination that a "wrongful act" has occurred. Any claims pertaining to alleged wrongful acts and the parties associated with them are pending in the 401-Proceeding. The absence of these parties from the District Court Proceeding both negates any effort by Curtis to promote her dominant jurisdiction claim, and speaks to the reasons why the District Court

Proceeding should be transferred to Probate Court.

Is the Estate a proper party to either of the two pending lawsuits?

Curtis frequently addresses the claims asserted by the Estate in the District Court Proceeding. Like Freed, Curtis seems to suggest that there is significance to the fact that Carl's replacement has never been named. Pursuant to the terms of Nelva's Will, that replacement should be Amy. It is unclear whether Curtis opposes Amy's appointment, but apparently, Carl still does. But the issue of Carl's replacement (relative to the Freed Deposition and the District Court Proceeding) of course begs the question of whether the claims assert against Freed by Carl were even the Estate's to begin with.

In no uncertain terms, Nelva's Will expressly indicates that she gives, devise and bequeaths all of her property and estate to her trust. Consistent with this, Carl identifies the District Court Proceeding as an Estate claim in the sworn Inventory, Appraisal and List of Claims filed on March 26, 2013. However legitimate (or illegitimate) the claims asserted by Carl in the District Court Proceeding may be, those claims are assets of the Trust. Thus, in reality, it is not a replacement executor that determines the future of the District Court Proceeding (or even the waiving of the alleged attorney-client privilege), but rather the trustee(s) as per the Brunsting Trust Documents.

Accordingly, it should be confirmed that those claims are assets of the Trust. As trust assets, control over them, any applicable privileges and/or the waiver of same rests in the hands of the trustee(s), who will waive any applicable privileges to allow the Freed Deposition to proceed unimpeded.

Answering Curtis' question about "what can be concluded" by reference to the no-content clause(s) contained within the Brunsting Trust Documents.

Amy reminds the Court of prior discussions regarding the observations made by Greg Lester in his Report of Temporary Administrator Pending Contest. On Page 7 of the Report, Mr. Lester addresses the no-contest clause(s) contained within the Brunsting Trust Documents. He 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."** [Emphasis Added].

Elmer and Nelva expressly stated an intent to disinherit any beneficiary who contested their Wills or the Brunsting Trust Documents, and instructed their trustee(s) to hold any such beneficiary accountable for doing so. Curtis' actions since Nelva's death trigger the forfeiture clause(s). The conclusion Curtis should draw is that her mother and father did not want her taking the actions she has taken without penalty. The "threat" of disinheritance comes not from Amy or Anita, but rather from Nelva and Elmer.

If claims asserted and/or actions undertaken by Carl and/or Curtis throughout the course of the 401-Proceeding, the 402-Proceeding, the District Court Proceeding, the 2012 Federal Proceeding and/or the 2016 Federal Proceeding trigger the no-contest clause(s), then each has effectively "disinherited" themselves. As a result, as Mr. Lester concludes, all other issues would likely be resolved.

Forfeiture of Carl and Curtis' beneficiary status means that there are no adverse claims asserted against Amy, Anita or Carole in the 401-Proceeding. The Freed Deposition, unencumbered by the potential assertion of privilege, will assist the Court in determining whether Carl and/or Candy have forfeited their interests. This in turn will allow Amy and Anita to fully

and properly respond to Carl's Motion for Partial Summary Judgment.

II. PRAYER

Amy requests that the Court consider the Reply Points above in conjunction with issues already addressed in the Motion for Clarification and/or Motion to Dismiss, and enter all necessary and proper relief related to these issues. Additionally, Amy Brunsting prays for such other and further relief (general and special, legal and equitable) to which she may be entitled, collectively, individually or in any of her representative capacities.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: 

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

ATTORNEYS FOR AMY BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 5th day of February 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorneys for Candace Kunz-Freed:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, L.L.P.
One Riverway, Suite 1400
Houston, Texas 77056
Via E-Mail: zfoley@thompsoncoe.com
Via E-Mail: creed@thompsoncoe.com

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
Via E-Mail: occurtis@sbcglobal.net

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
Via E-Mail: bayless@baylessstokes.com

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting
Via E-Mail: cbrunsting@sbcglobal.net

Attorneys for Anita Kay Brunsting:

Steve Mendel/Tim Jadloski
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via E-Mail: steve@mendellawfirm.com
tim@mendellawfirm.com


NEAL E. SPIELMAN