

Candace Louise Curtis	§	
	§	412249-401
v.	§	Feb 27, 2012
	§	
Anita Brunsting et al.,	§	
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IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	412,249 April 2, 2012
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Carl Henry Brunsting	§	
Individually	§	
	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
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Findings of Fact, Conclusions of Law, and Order after Hearing

I. Introduction

Before the Court is Defendant Amy Brunsting’s Motion for Sanctions. Also before the Court is the *pro se* Plaintiff, Candace Louise Curtis’, application for Order to Show Cause. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the Plaintiff’s Motion for Order to Show Cause should be granted and that the Defendant’s Motion for Sanctions should be denied.

II. Background

The Plaintiff filed her original petition in the federal court under diversity jurisdiction. After an evidentiary hearing had April 9, 2013, a preliminary injunction was issued in the federal Court proceedings. The injunctive Order contains the following:

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The federal lawsuit was remanded to this Court for consolidation with the matter pending here by Order dated May 15, 2014 as follows:

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

The Transfer Order was accepted by Order of this Court on May 28, 2014.

III. Contentions of the Parties

The Plaintiff contends the Defendants, having personal knowledge of the preliminary injunction, have perpetually failed to comply with the affirmative command that income received for the benefit of the Trust beneficiary be deposited appropriately in an account for the benefit of the beneficiary. Plaintiff also contends the distribution of income for the benefit of the beneficiary is a fiduciary duty owed to her by the Defendants and Defendants' failure to establish separate accounts for each beneficiary and failure to fund those accounts with trust income, is

contempt for the order and a breach of trust injury to the beneficiary. Plaintiff also contends that the matter before the Court is strictly business, involving only a fiduciary relationship and property interests.

Defendant contends Plaintiff Curtis is in contempt of this Court's Order, dated February 14, 2019, denying her pleas and motions, and that Plaintiff Curtis has ignored this Court's findings. Defendants further argue that Curtis' jurisdictional arguments are meritless and intentionally designed to harass, to waste Estate or Trust assets, and/or recklessly pursued without regard to the law or the facts. Defendant further contends that Curtis' subject matter jurisdiction arguments reveal disrespect for judicial authority and evidences intent to exacerbate what Defendant calls an already emotionally-charged matter. Defendant argues that pleadings filed by Plaintiff were frivolous and seeks compensation from Plaintiff for the additional costs suffered as a direct result of those filings.

IV. Controlling Law

a. Violation of Court Orders

A court has inherent authority to enforce its orders. Pursuant to §21.001(a) of the Texas Government Code, a court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction including the power to sanction for contempt. The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail (§21.002(b)).

b. Frivolous Pleadings and Motions

Rule 13 of the Texas Rules of Civil Procedure states that the signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment.

This rule also appears at §9.11 Civil Practice and Remedies Code. §9.11(3) defines “Groundless” to mean (A) no basis in fact; or (B) not warranted by existing law or a good faith argument. Section §10.001 of the Texas Civil Practice and Remedies Code requires each allegation or other factual contention in the pleading or motion to have evidentiary support and requires that each factual contention raise a valid issue of law.

V. Discussion and Analysis

a. Defendant’s Motion for Sanctions

Defendant refers to a number of pleadings filed by Plaintiff Curtis in this Court and argues that the filing of these motions and pleadings were frivolous and thus constitute disrespect for judicial authority, that they were filed with intent to harass, waste assets and/or recklessly pursued without regard to the law or the facts.

All five of Defendant’s exhibits are of pleadings in United States District Courts. This Court presumes, as a matter of law, that the orderly conduct of a District Court of the United States is the business of a District Court of the United States. Defendant provides no state law authority for this Court to impose sanctions for a party’s filings in Courts of the United States.

Defendant also fails to identify any particular facts alleged in Plaintiff's pleadings that lack evidentiary support. The mere fact that the Court ruled the claims and legal arguments were without merit does not equate with a finding that the motions and pleadings were groundless and brought in bad faith or groundless and brought with intention to harass another party.

Plaintiff's Plea to the Jurisdiction argued that the matter pending in this Court involves the administration of an inter vivos trust and not the administration of a decedent's estate. Plaintiff's Plea in Abatement argues that this is not the court of dominant jurisdiction because of the trust action filed earlier in the District Court. Counsel for the estate plan attorneys also cited dominant jurisdiction in their July 17, 2015 objection to Carl's motion to Transfer Related District Court Case to Probate Court 4.

The operative language in Rule 13 is "to the best of their knowledge". In order to violate Rule 13 a party or an attorney would have to knowingly file a groundless motion in bad faith or, knowingly file a groundless motion for the purpose of harassment.

Texas Civil Practice and Remedies Code §10.002(a) Authorizes a party to make a motion for sanctions describing the specific conduct violating §10.001. §10.002(b) also authorizes the court to enter an order describing the specific conduct that appears to violate Section 10.001, on its own initiative, and direct the alleged violator to show cause why the conduct has not violated that section.

Defendant claims to have incurred great expense as a result of the Plaintiff's filings but when asked to identify the pleadings Defendant was forced to prepare in response to the Plaintiff's pleadings, Defendant's counsel was unable to cite to any responsive pleadings.

Plaintiff testified that Defendant did not file any responsive pleadings and the Court has been unable to locate Defendant's responsive pleadings in the record.

Defendant's motion fails to rise to the level of particularity required by these two authorities, as it fails to identify a specific fact claimed by the Plaintiff that lacks evidentiary support, and fails to provide evidentiary support for a claim that the motions were brought in bad faith or with intent to harass. Defendant fails to cite to any rule or statute that would provide Defendant with the relief requested.

b. Plaintiff's Application for Order to Show Cause

Plaintiff seeks to enforce the preliminary injunction entered in the federal court that Defendants have actual and constructive notice of.

The preliminary injunction not only enjoins certain conduct but also commands specific performance, which that court has identified in the Order as a fiduciary obligation owed to the Plaintiff by the Defendants. Acceptance of the Order transferring the federal case to this Court was an acceptance of the conditions stated therein, binding this Court with respect to those Orders. Section §21.001(a) of the Texas Government Code provides the Court with the necessary authority to enforce it.

The affidavit of Plaintiff Curtis stating that she is informed and believes the affirmative commands in that Order have not been complied with is sufficient. The burden of proof and of bringing forth evidence showing the fiduciary has complied with the affirmative commands in the preliminary injunction and the burden of bringing forth evidence to prove the performance of fiduciary obligations owed to the beneficiary, both fall upon the fiduciary.

The Court thus finds reasonable cause to issue the following Order:

IT IS ORDERED, ADJUDGED AND DECREED that Anita and Amy Brunsting are to personally appear before this court on _____, 2019 at ____ .m. to give any legal reason why they should not be held in contempt for each willful violation of the order commanding specific performance, and sanctioned accordingly.

_____, 2019

THE HONORABLE JAMES HORWITZ
JUDGE HARRIS COUNTY
PROBATE COURT NO. 4

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this 8th day of July 2019.

//s//

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