

NO. 412,249-401

ESTATE OF

NELVA E. BRUNSTING,

DECEASED

CARL HENRY BRUNSTING, et al

v.

ANITA KAY BRUNSTING, et al

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IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**AMY BRUNSTING'S MOTION FOR SECOND CONTEMPT
AND ADDITIONAL SANCTIONS**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING (“Amy”) files this Motion for Second Contempt and Additional Sanctions (the “Motion”) due to the conduct of Candace Louise Curtis (“Curtis”). For reasons discussed herein, Amy requests that this Court to **again** find Curtis in civil contempt and sanction Curtis appropriately.

I.

INTRODUCTION

On June 28, 2019, the Court considered Amy’s Motion for Sanctions and/or Contempt. Curtis was present at this hearing via telephone (the “June 2019 Contempt Action”). As the Court will recall, the June 2019 Contempt Action stemmed from Curtis’ violation of the Court’s Order Denying Pleas and Motions filed by Candace Curtis dated February 14, 2019 (the “February 2019 Order”).

On July 23, 2019, the Court signed its Order Regarding Amy Brunsting's Motion for Sanctions and/or Contempt (the "July 2019 Contempt Order").¹ That same day, a copy of the July 2019 Contempt Order was provided to all parties, including Curtis.²

Curtis has failed to comply with the July 2019 Contempt Order, necessitating the filing of this Motion.

II.

DESCRIPTION OF CURTIS' LATEST BAD FAITH, CONTEMPTUOUS ACTIONS

The July 2019 Contempt Order found and ordered that Curtis was in contempt of Court. As punishment for her contempt, Curtis was fined \$500.00 and ordered to pay this sum to the Harris County District Clerk on or before September 1, 2019. There is no indication that Curtis paid the fine prior to the deadline, or at any time since.

The July 2019 Contempt Order also stated that as additional punishment for her contemptuous conduct and/or as a sanction, Curtis was to pay Amy, in care of Griffin & Matthews, the sum of \$1,975.00. Curtis did not tender these funds prior to the deadline, or at any time since.

More than thirty (30) days has passed since entry of the July 2019 Contempt Order, and Curtis took no action relative to it while the Court had plenary power.

Curtis previously established a pattern of ill-advised, unwise and contemptuous conduct, continues. As a result of the above described conduct, Curtis remains in contempt of the Court's February 2019 Order, and should now be found in contempt of the Court's July 2019 Contempt Order and further sanctions, as appropriate.

¹ See Exhibit A – Copy of Order, incorporated by reference as if fully restated herein.

² See Exhibit B – Court's transmittal e-mail of July 23, 2019, incorporated by reference as if fully restated herein

III.

REQUEST FOR CONTEMPT AND/OR SANCTIONS

A. Civil Contempt

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson*, 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than \$500 and/or confinement to the county jail for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Amy requests that the Court find that Curtis remains in contempt of the Court's February 2019 Order and is now also in contempt of the Court's July 2019 Contempt Order. Amy requests that Curtis be assessed an additional fine in the maximum amount available at law (\$500.00), and that she continue to be held in contempt of court until the prior fine, and this fine have been paid.

B. Sanctions

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Amy requests that this Court sanction Curtis, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. In light of Curtis' disregard of the Court's prior issuance of a monetary sanction, the next sanction to be assessed against her should include the dismissal of all of her affirmative claims.

Dismissing her affirmative claims is justified for a number of reasons. She has engaged in egregious misconduct, in part due to her violation of the Court's February 2019 Order **and** the Court's July 2019 Contempt Order. She has failed to bring forth any evidence in support of her affirmative claims, nor can she. There is no factual or academic (legal) basis for her claims, which by their very nature trigger the forfeiture/no-contest language in the trust documents.

Dismissing her affirmative claims is an appropriate sanction. Curtis initiated this lawsuit. In doing so, she chose to avail herself of the judicial process. She has used (and abused) the process to pursue her specific agenda. However, whenever the judicial process confronts her with an outcome contrary to her agenda, she ignores the process. This level of disrespect can only be remedied by dismissing her claims. There is a direct relationship between Curtis's conduct and the requested sanction.

Additionally (or, if her affirmative claims are not dismissed, then alternatively), Amy requests that that Court assess an additional monetary sanction against Curtis. As part of the June 2019 Contempt Action, Amy sought sanctions in an amount equal to attorney's fees incurred. Evidence was submitted to the Court describing the nature, basis and amount of these fees. In total, Amy requested a sanction in the amount of \$9,480.00.³ The Court showed Curtis mercy and leniency, ordering Curtis to pay only \$1,975.00.

³ See (and/or take judicial notice of) Exhibit 5 to Amy's Motion for Sanctions and/or Contempt, incorporated by reference as if fully restated herein.

In light of the conduct described herein, Amy requests that the Court assess a monetary sanction equivalent to the difference between the sanction original requested and the amount assessed. More specifically, Amy requests that the Court issue an additional monetary sanction against Curtis in the amount of \$7,505.00

IV.

PRAYER

For these reasons addressed above, Amy Brunsting requests that the Court set this Motion for hearing, and enter all necessary and proper relief related to the issues addressed herein. 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

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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 November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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