

CARL HENRY BRUNSTING, et al	§	IN PROBATE COURT
v.	§	NUMBER FOUR (4) OF
ANITA KAY BRUNSTING, et al	§	HARRIS COUNTY, TEXAS

**CO-TRUSTEES' FIRST SUPPLEMENTAL MOTION TO EXCLUDE
TESTIMONY/EVIDENCE, FOR SANCTIONS AND/OR FOR THIRD CONTEMPT AS
TO CANDACE LOUISE CURTIS**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY RUTH BRUNSTING (“Amy”) and ANITA KAY BRUNSTING (“Anita”) (the “Co-Trustees”), in their individual capacities and as the co-trustees of The Brunsting Family Living Trust a/k/a The Restatement of The Brunsting Family Living Trust (the “Trust”) file this their First Supplemental Motion to Exclude Testimony/Evidence, for Sanctions and/or For Third Contempt As To Candace Louise Curtis (the “Supplemental Motion”).

I. INTRODUCTION

Originally, Co-Trustees sought “death penalty sanctions” based on Curtis’s repeated, habitual disregard for the Orders of this Court (and others). There is now an additional, non-sanctioned-based reason for excluding Curtis from trial (and/or any other future proceedings). Specifically, by operation of the Trust, Curtis forfeited her interest in the Trust. Thus, her status is one of a nullity. Curtis has no right, under the Trust or at law, to be heard in this matter. In other words, Curtis lacks standing, capacity, and/or any other basis for further participation in this matter, other than a right to be heard regarding the merits of this Supplemental Motion and to appeal a final judgment to be entered in this case.

II. SUMMARY OF FILINGS & PROCEDURAL BACKGROUND PERTAINING TO MOTION TO EXCLUDE

Regarding the requested exclusion of testimony/evidence, and in addition to this Supplemental Motion, the following documents are before the Court:

1. Co-Trustees' Motion to Exclude Testimony/Evidence, for Sanctions and/or For Third Contempt As To Candace Louise Curtis, including Exhibits A - D (filed on or about February 21, 2022)(the "Motion");
2. Curtis's Response to Motion to Exclude Evidence, Sanctions and/or Contempt with Motion to Set Aside Orders for Want of Jurisdiction and Failure to Resolve Bill of Review First, and its attachments (filed on or about February 23, 2022);
3. Co-Trustees' Reply to Curtis's Response to Motion to Exclude Testimony/Evidence, for Sanctions including Exhibits E - I (filed on or about February 24, 2022)(the "Reply");
4. Curtis's Sur-Reply to Defendant's Reply to Plaintiff's Response to Motion to Exclude, for Sanction and Contempt and its attachments (filed on or about February 25, 2022); and
5. Co-Trustees' Response to Curtis's Sur-Reply Regarding Co-Trustees' Motion to Exclude, including Exhibit J (filed on or about February 25, 2022) (the "Response to Sur-Reply").

The Motion was set to be heard by the Court on February 25, 2022, in conjunction with the Pre-Trial Conference scheduled for that same day. Prior to the Motion being heard, the parties learned that Co-Trustees' Motion for Summary Judgment had been granted as to Curtis. **See Exhibit K.** As a result, Co-Trustees passed the hearing on the Motion, reserving the right to reset it for consideration. **See Exhibit L**

III. ARGUMENT AND ANALYSIS

As the Court's file will reflect, the Co-Trustees filed their Motion for Summary Judgment ("MSJ") on November 5, 2021. Curtis responded. The MSJ was subsequently set for hearing as to Curtis only. Prior to the hearing, which was to be held on December 14, 2021, the Court announced its intention to consider the MSJ via submission. Approximately two months later, on February 25, 2022, the Court announced its decision and the Order Granting Co-Trustees' Motion

for Summary Judgment as to Candace Louise Curtis Only (the “Summary Judgment Order”) was signed. **See Exhibits K & L**

The Summary Judgment Order contains a finding that “*Curtis has forfeited her interest as a beneficiary of the Trust and/or the August 2010 QBD...*” **See Exhibit K [Emphasis Added]**.

The “forfeiture finding” is consistent with the terms of the Trust. By way of example but not limitation, at Article XI, Section C, the Trust, in relevant part, states:

Founders do not want to burden this trust with the costs of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee’s written permission. **Any person, agency or organization who shall originate** (or who shall cause to be initiated) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant’s interest in this trust or in the Founders’ estates, without the Trustee’s written permission, **shall forfeit any amount** to which that person, agency or organization is or may be entitled

See Exhibit L at Page 11-2 [Emphasis Added]

In the eyes of the Trust and by virtue of her vexatious conduct, and as confirmed by this Court, Curtis forfeited her interest in the Trust. As a matter of law Curtis no longer has any of the rights that she originally had under the Trust. In other words, Curtis lacks standing, capacity, and/or any other basis to participate further in this litigation, other than a right to be heard regarding the merits of this Supplemental Motion and to appeal a final judgment to be entered in this case.

This means that, except as provided in the preceding sentence, Curtis has no right to participate, be heard at trial, or introduce evidence; no right to pursue motion practice; and no right to offer testimony on any matter that is or may eventually be pending before the Court in this 401-proceeding, the base case, or any other ancillary or related proceeding before this Court in connection with the Trust, the Estate of Nelva Brunsting, and/or the death of Nelva Brunsting.

IV. CONCLUSION & PRAYER

For the reasons addressed in the Co-Trustees' Motion, Reply and Response to Sur-Reply, Curtis's egregious, vexatious conduct supports the imposition of death penalty sanctions. Additionally and/or alternatively, for the reasons addressed in this Supplemental Motion, Curtis has no rights under the Trust or in this litigation. Any evidence, argument, testimony, or other effort in furtherance of her participation in this trial must be excluded from the record.

WHEREFORE, PREMISES CONSIDERED, Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING request that:

1. This Court grant the relief requested in the Supplemental Motion; and
2. Grant/award the Co-Trustees such other and further relief at law and in equity to which either or both may be justly entitled, and/or as needed to effectuate the issues identified in this Supplemental Motion.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: /s/ Neal E. Spielman
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

AND

THE MENDEL LAW FIRM, L.P.

BY: /s/ Stephen A. Mendel
STEPHEN A. MENDEL
Texas State Bar No. 13930650
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
O: 281-759-3213
F: 281-759-3214
E: steve@mendellawfirm.com

ATTORNEYS FOR ANITA BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 31st day of March 2022, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorney for Candace Louise Curtis:

Candice L. Schwager
Schwager Law Firm
1417 Ramada Drive
Houston, Texas 77062
Via E-Mail: candiceschwager@icloud.com

Attorneys for Anita Kay Brunsting:

Stephen A. Mendel (SBN 13930650)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via E-Mail: steve@mendellawfirm.com

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, TX 77098
Via E-Mail: bayless@baylessstokes.com

Attorneys for Carole Ann Brunsting:

John Bruster Loyd

Jones, Gillaspia & Loyd, L.L.P.
4400 Post Oak Pkwy, Ste. 2360
Houston, TX 77027
Via E-Mail: *bruse@jgl-law.com*

BY: */s/ Neal E. Spielman*
NEAL E. SPIELMAN