

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

5	THE ESTATE OF:	)	IN THE PROBATE COURT
6	NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
7	DECEASED	)	HARRIS COUNTY, TEXAS

11 \* \* \* \* \*

12 PRETRIAL HEARING

13 \* \* \* \* \*

18 On the 31st day of March, 2022, the following

19 proceedings came to be heard in the above-entitled and

20 numbered cause before the Honorable James Horwitz,

21 Judge of Probate Court No. 4, held in Houston, Harris

22 County, Texas:

24 Proceedings reported by Machine Shorthand

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VOLUME 1  
(Pretrial Hearing)

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1 March 31, 2022 (WHEREUPON the following proceedings  
2 were conducted via Zoom and YouTube:)

3 PROCEEDINGS:

4 THE COURT: All right. This is our  
5 pretrial hearing. Good afternoon, lawyers.

6 This is Case Number 412249-401, in the  
7 Estate of Nelva E. Brunsting.

8 For the record, I need to have each  
9 attorney make an appearance and tell the Court who you  
10 represent.

11 MR. MENDEL: Steve Mendel, Your Honor,  
12 representing Anita Brunsting who is a Defendant and a  
13 Co-Trustee in this matter.

14 MS. SCHWAGER: Candice Schwager  
15 representing Candace Curtis in this matter who is the  
16 Plaintiff and Counter-Defendant.

17 MR. LOYD: Your Honor, Bruse Loyd, and I  
18 represent Carole Brunsting, one of the beneficiaries of  
19 the Trust.

20 THE COURT: Have you filed a notice of  
21 appearance?

22 MR. LOYD: Yes, Your Honor, I filed it. I  
23 got the electronic confirmation, but I'm -- and I'm  
24 receiving, just today, I started receiving filings; but  
25 I filed a notice a couple of weeks ago.



1 THE COURT: Okay.

2 MS. BAYLESS: Bobbie Bayless, Your Honor,  
3 on behalf of Carl Brunsting.

4 MR. SPIELMAN: Neal Spielman, Your Honor,  
5 on behalf of Amy Brunsting.

6 MR. REED: Cory Reed on behalf of Candace  
7 Kunz-Freed.

8 OFF-DOCKET MOTIONS:

9 THE COURT: Okay. So, there's some  
10 pending motions that are not set for today's pretrial,  
11 but I want to briefly discuss them for a few moments.

12 Ms. Schwager, I believe you filed a motion  
13 to vacate or set aside the February 25th, 2022, order  
14 citing Government Code 74.053(a); is that correct?

15 MS. SCHWAGER: There were 1, 2, 3, 4, 5, 6  
16 7, 8, 9, 10 grounds, and that was just one of them.

17 THE COURT: Okay. Well, just so I can  
18 clear that up - when you take the position that there  
19 was a valid objection to Judge Stone under 74.053(a), I  
20 want to point you to Government Code 25.0022, Section R  
21 which specifically states that Chapter 74 does not apply  
22 to an assignment in a probate court.

23 Also, you have a issue you raised in  
24 regard to a bond. Section 25.00231(e) specifically  
25 states that this bond section does not apply to an

1 assigned judge sitting by assignment in a statutory  
2 probate court. So, as far as I'm concerned, those  
3 matters are moot, and we don't have to hear about that  
4 any further.

5 MS. SCHWAGER: When you say -- I'm sorry.  
6 Those matters, are you just speaking of is that ground?

7 THE COURT: Yeah, those two issues for  
8 sure. I hadn't really studied the full extent of your  
9 motion to exclude or vacate, but those were the  
10 technical -- seems like those were the technical  
11 matters.

12 MS. SCHWAGER: Okay.

13 PRETRIAL CONFERENCE:

14 THE COURT: So, what we need to do today  
15 is we have a trial setting that I believe is scheduled  
16 for April 5th. And correct me if I'm wrong, but I  
17 believe that we're seeking a 12-person jury; is that  
18 correct?

19 MR. MENDEL: Your Honor, I don't -- we're  
20 here today, and counsel for the -- with the exception of  
21 Ms. Schwager, we don't -- that trial is scheduled to be  
22 on fees. There are no other pending issues among the  
23 parties subject to these motions to vacate and things  
24 like that. But there's no pending issue for trial other  
25 than the issue of fees and Carl Brunsting, Carole

1 Brunsting, Amy Brunsting, and Anita Brunsting have an  
2 agreement in principal with regard to the fees which we  
3 think negates the necessity of a trial next week;  
4 specifically, the agreement in principal is not yet  
5 reduced to writing. There's still some issues being  
6 negotiated. But with regard to the fees - through  
7 today - the estimate is about \$680,000 plus-or-minus for  
8 the group in the Matthews Law Firm that represents Amy  
9 Brunsting and the Mendel Law Firm that represents Anita  
10 Brunsting and I think Ms. Bayless on behalf of Carl  
11 Brunsting and Mr. Loyd on behalf of Carole Brunsting  
12 would confirm that those fees are reasonable and  
13 necessary, which from our perspective, therefore  
14 eliminates the necessity of a trial. I've asked Mr.  
15 Bayless -- Ms. Bayless and Mr. Loyd to please confirm  
16 that, if they would.

17 MS. BAYLESS: That's right, Your Honor.

18 MR. LOYD: That's correct, Your Honor.

19 THE COURT: All right. I neglected to ask  
20 Mr. Munson to speak. Can you unmute and tell me if  
21 you're an attorney, who you are, and who you represent?

22 (No audible response)

23 THE COURT: We have a person on the screen  
24 named Rik Munson; anybody identify that person?

25 MS. SCHWAGER: Yes, Your Honor, he's a



1 witness of mine and Candace Curtis' paralegal who is my  
2 paralegal.

3 MR. MENDEL: We also understand he's the  
4 boyfriend of Candace Curtis.

5 MR. SPIELMAN: I didn't follow that  
6 sentence at all. Mr. Munson is -- is Ms. Schwager  
7 saying that Mr. Munson is her paralegal or that Ms.  
8 Schwager is -- I mean, Ms. Curtis is her paralegal?

9 MS. SCHWAGER: No, Mr. Munson is.

10 MR. SPIELMAN: Okay. And is he actually  
11 the person that's on the line because in the past, it's  
12 been your client who's signed in under that name.

13 MS. SCHWAGER: I believe the invitation  
14 was sent out to Mr. Munson, so he joined us today as my  
15 paralegal to take notes.

16 MR. MENDEL: Well, is he going to come off  
17 video and answer the judge's question?

18 THE COURT: Mr. Munson, can you hear? Can  
19 you unmute, please, Mr. Munson and talk to me.

20 (No audible response)

21 MS. SCHWAGER: I'm going to text him.

22 THE COURT: Okay. Ms. Schwager, just so  
23 you know - if he doesn't respond to me, I'm going to  
24 remove him from this hearing, and he can watch on  
25 YouTube and take notes.

1 MS. SCHWAGER: Okay.

2 THE COURT: So, Mr. Munson, for whatever  
3 reason - technical or intentional - you're not  
4 responding to me; and therefore, I'm instructing my  
5 staff to remove you from this hearing. You can go on --

6 MS. SCHWAGER: I'm --

7 THE COURT: You can go on --

8 MS. SCHWAGER: I'm sorry.

9 THE COURT: Please don't interrupt.  
10 Please don't interrupt me.

11 You can, Mr. Munson, you can go on YouTube  
12 and watch this and take notes. So, Judge Comstock, if  
13 you're controlling this, can you remove Mr. Munson.

14 (Mr. Munson removed from Zoom)

15 THE COURT: Okay. So, what I'm hearing is  
16 that - from Mr. Loyd, Ms. Bayless, Mr. Mendel and Mr.  
17 Spielman - that there is an issue involving attorneys'  
18 fees but no need for a trial. And I want to make sure  
19 what I've said, as far as those lawyers are concerned,  
20 is correct. Is that correct, Mr. Spielman?

21 MR. SPIELMAN: I believe the correct way  
22 to say it is that there is no issue with attorneys'  
23 fees, and the non-forfeited Brunsting siblings  
24 represented by myself, Mr. Mendel, Ms. Bayless, and Mr.  
25 Loyd have agreed, in principal, to the amount of the

1 fees, and we will paper-up an agreement as to how  
2 they'll be funded within the context of the Court's  
3 order on the summary judgment.

4 THE COURT: All right. And then in  
5 regards to Ms. Schwager's client - I believe there's  
6 been a motion for summary judgment signed that, in  
7 essence, removes her from this -- her ability to collect  
8 inheritance; is that correct, Mr. Spielman?

9 MR. SPIELMAN: It is correct, Judge;  
10 that's the summary judgment order that Judge Stone  
11 signed after consulting with you when we were last  
12 before the Court on the pretrial conference of February  
13 the 25th, 2022.

14 THE COURT: And so, the Co-Trustees filed  
15 a motion to exclude testimony and evidence for sanctions  
16 and for third contempt as to Candace Louise Curtis. Do  
17 you want to just explain to me what you're trying to  
18 accomplish with that?

19 MR. SPIELMAN: I will try to do so  
20 briefly, Judge, because that is also - like you  
21 mentioned earlier - not technically on the hearing  
22 docket for today.

23 But, essentially, Judge, that was a motion  
24 that we had filed before learning of the summary  
25 judgment stemming from Ms. Curtis' various failures to



1 comply with the Court's orders and her conduct that we  
2 felt should preclude her from being able to present her  
3 case at trial because -- or allow our case against her  
4 or about her. Since it was opposed as a motion for  
5 sanctions and contempt, I think it survives the summary  
6 judgment and can still be considered as such in  
7 post-summary judgment. And then what probably has not  
8 made it to your screen, Judge, is that this morning, the  
9 supplement to it, that focuses more on the motion to  
10 exclude as a non - I'll call it, for purposes of right  
11 now - a non-sanction-based reason to exclude Ms. Curtis  
12 based off of the Court's summary judgment order in which  
13 she's, essentially, forfeited her interest in being  
14 disinherited.

15                   So, long story - short, there's no,  
16 there's no standing, no capacity for her to appear or  
17 participate in the trial or any matter other than those  
18 limited things that, in part, would be connected with  
19 her effort to appeal the summary judgment order and --

20                   THE COURT: So --

21                   MR. SPIELMAN: -- everything is probably  
22 going up, we figured that it probably makes -- that it  
23 made sense to put it back on the docket whether phrased  
24 as the motion to exclude based on the summary judgment  
25 or and/or as the sanctions and the contempt so that the



1 record is clear and particularly since the contempt and  
2 the sanctions part, Judge, you know, it's pretty  
3 significant when you consider the totality of Ms.  
4 Curtis' behavior. And, again, we'll argue the details  
5 of that later if necessary, but we thought it important  
6 the record be clear about who Ms. Curtis is and how  
7 she's conducted herself throughout the course of the  
8 [inaudible].

9 THE COURT: So, the question before the  
10 Court today, if we're not going to have a trial is - to  
11 what degree the Court is willing to entertain Ms.  
12 Schwager's motion to vacate or set aside the summary  
13 judgment order?

14 MR. MENDEL: Well, Your Honor, it was  
15 indicated from Ms. Vaso that that would be rescheduled.  
16 And there are several matters that we think need to be  
17 set for a hearing; one would be Ms. Schwager's motion or  
18 her client's motion to vacate. It's important that the  
19 Co-Trustees, that there be a ruling on the motion to  
20 exclude. There's the possibility -- we want to put the  
21 Candace Curtis versus the Co-Trustee portion of the case  
22 into a position for a final judgment to be issued so  
23 that they can pursue whatever appellate remedies they  
24 want to pursue; that may involve a severance; it may  
25 not, but that's an issue that would need to be

1 addressed.

2           There are also some claims by the estate  
3 that were filed early on by Carl Brunsting, and we  
4 believe those claims are going to be resolved; but if  
5 not resolved in advance of a, of a final judgment that  
6 would deal with Curtis and the Co-Trustees and maybe  
7 that gets severed out, but the rest of the parties  
8 believe that those are going to be a moot issue.

9           So, we would respectfully suggest that  
10 a -- they be set out, say, a couple of weeks down the  
11 road, and all of these pending issues be scheduled for a  
12 hearing so they can all be resolved at one time; and it  
13 would also give the parties - that have reached this via  
14 agreement in principal - to finish a written settlement  
15 agreement for tender to and approval by the Court.

16           THE COURT: How long of a time period you  
17 think you need in a future date? Can it be accomplished  
18 in one day?

19           MR. MENDEL: The hearing?

20           THE COURT: Yes.

21           MR. MENDEL: The hearing can be  
22 accomplished in one day, yes.

23           THE COURT: On all these various matters?

24           MR. MENDEL: Yes. I would imagine the  
25 longest one is probably going to be Ms. Curtis' motion

1 to vacate. Everything else from the perspective of the  
2 other four parties, I think is going to be extremely  
3 short.

4 THE COURT: All right. And we have to be  
5 conscious of the Court's plenary power from the date of  
6 this motion for summary judgment that was -- when was  
7 that signed; was that February 25th?

8 MR. SPIELMAN: Yes, Judge, and I think  
9 that's an important thing that we're going to have to  
10 deal with as well. I think some of what Ms. Schwager  
11 has filed on behalf of Ms. Curtis may already be late.  
12 And as I mentioned -- something that Mr. Mendel  
13 neglected to mention - Judge, you were talking earlier  
14 about a Government Code, issues that were raised in Ms.  
15 Curtis' motion to vacate. There's also a separate  
16 document which I believe is filed as an amended  
17 objection to the appointment of any former judge or  
18 something, words to that effect. And I think we  
19 probably have to consider that objection as well at some  
20 point haven't had a -- we, the Co-Trustees, have not had  
21 a chance to respond to that --

22 THE COURT: Well, that objection is under  
23 a general rule of Government Code 74. It's not  
24 applicable to a probate judge's sitting by assignment,  
25 and it specifically is - as I mentioned earlier - that's



1 25.0022(r), says 74, Chapter 74 doesn't apply in this  
2 instance.

3 MR. SPIELMAN: Okay. I may have  
4 misunderstood, then Judge. I thought, I thought the  
5 issues were separate. But if we don't need to -- if  
6 that objection is being, I guess, denied, then it's been  
7 denied, and we don't have to deal with it anymore.

8 THE COURT: Well, that objection, as far  
9 as I can read in the motion to set aside, as far as her  
10 reference to Government Code 74.053(a), that's denied.  
11 And her issue about bond and Judge Stone's issue on  
12 having a bond under the Government Code 25.00231(e),  
13 doesn't apply in this circumstance to a judge sitting by  
14 assignment in a statutory probate court.

15 So, Ms. Schwager, what -- how soon could  
16 you be ready to make your argument?

17 MS. SCHWAGER: Well, my brief is very  
18 comprehensive; it has all the certified documents  
19 necessary that were not entered into the record by the  
20 Co-Trustees who admit that none of their exhibits were  
21 even authenticated in their motion which was untimely.

22 But I think I agree with Mr. Mendel's  
23 appraisal. I'd like some time to respond to the  
24 motion to exclude in case you overturn this February  
25 25th order. As I mentioned, there are many more grounds



1 other than the objection to Judge Stone.

2 THE COURT: Okay. Well, Judge Comstock  
3 when can we fit this in?

4 JUDGE COMSTOCK: Well, so --

5 THE COURT: How much time -- do you want  
6 to try and do it next week, Ms. Schwager?

7 MS. SCHWAGER: The following week would be  
8 better. I have some hearings next week.

9 THE COURT: Okay.

10 JUDGE COMSTOCK: I believe Mr. Spielman  
11 suggested a couple of weeks. We do have some time  
12 Thursday, the 14th; that is the day before the Good  
13 Friday holiday.

14 THE COURT: Will that work for you, Ms.  
15 Schwager?

16 MS. SCHWAGER: Yes, Judge.

17 THE COURT: How about you, Mr. Mendel?

18 MR. MENDEL: Judge, that's -- the 14th is  
19 problematic for me. I have a long-standing commitment  
20 already that I can't move.

21 THE COURT: What about the 13th -- well, I  
22 don't know. I don't know what our court schedule is.

23 JUDGE COMSTOCK: We have a pretty tric --  
24 pretty busy schedule on the 13th. I suggested the 14th  
25 because we were set for a two-week trial docket

1 including that date. We could try to fit something in  
2 on the 11th if that will provide enough time in the  
3 afternoon.

4 MS. SCHWAGER: I believe, Judge.

5 MR. MENDEL: The 11th would be good for  
6 myself, Your Honor.

7 THE COURT: And Ms. Schwager, I couldn't  
8 understand your response.

9 MS. SCHWAGER: Yes, sir.

10 THE COURT: It's okay with you?

11 MS. SCHWAGER: Yes.

12 THE COURT: All right. Mr. Spielman?

13 MR. SPIELMAN: That's fine; I'll make that  
14 work.

15 THE COURT: Okay. And, Ms. Bayless?

16 MS. BAYLESS: Well, Judge, I'm set for  
17 trial on the 11th. I don't yet know whether we would go  
18 on that day, so I think it will be fine. My involvement  
19 is not as important as the other people's, but I can --  
20 I think I can make it work if I get --

21 THE COURT: Mr. Loyd?

22 MR. LOYD: Yes.

23 THE COURT: Is that okay with you?

24 MR. LOYD: Yes, sir.

25 THE COURT: And Mr. Reed, what are we

1 doing with your client?

2 MR. REED: I mean, hopefully we're going  
3 to get some action. I mean, that's what I would hope.  
4 I mean, I think what I'm seeing is we're seeing some  
5 resolutions of the main characters, and I'm hoping, kind  
6 of once you've got that finalized, we can figure out how  
7 to get our case moving or wrapped up itself, so.

8 THE COURT: Thank you. Judge Comstock,  
9 what time on the 11th?

10 JUDGE COMSTOCK: That's Monday. Of  
11 course, we have mental health in the morning. So,  
12 depending on how much time they need. You know, it's  
13 always risky setting something early in the afternoon on  
14 Monday. You know, if mental health goes long, then we  
15 have a problem.

16 THE COURT: Let's set it for 1:30 on  
17 Monday, April 11th.

18 JUDGE COMSTOCK: Okay.

19 THE COURT: And I'll try to get through my  
20 commitment docket as fast as I can, all right,  
21 gentlemen?

22 MR. SPIELMAN: With regard to the hearing  
23 being on the 11th, you want to set any specific  
24 deadlines perhaps whether it be the Co-Trustees  
25 responding to the motion to vacate or Ms. Curtis or Ms.



1 Schwager responding, I guess, just the supplement to the  
2 motion to exclude because the other parts of that motion  
3 have been fully briefed and sur replied and everything  
4 already.

5 THE COURT: Well, I think it's reasonable  
6 that any replies ought to be submitted to opposing  
7 counsel by 5 p.m. on that Friday before that. I guess  
8 that's the 8th?

9 MR. SPIELMAN: Yes, that works for me,  
10 Judge, and I think that works for everybody, hopefully,  
11 because, you know, I think - and I've done it myself -  
12 but in this case, there seems to always be sort of a  
13 last-second flurry of stuff that probably doesn't even  
14 make it onto your desk on time. So, having a deadline  
15 like that, I think might help everybody.

16 COURT'S RULING:

17 THE COURT: All right. Okay. Well, then  
18 I won't call a panel on the 5th of April. And I will  
19 see you folks back on Monday afternoon, April 11th.

20 MR. SPIELMAN: Understood.

21 THE COURT: All right. Y'all have a good  
22 week, and all of you are excused.

23 MR. LOYD: Thank you, Your Honor.

24 MR. SPIELMAN: Thank you, Judge.

25 \* \* \* \* \*



1 The State of Texas )  
2 County of Harris )  
3

4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$147.00.  
18 and was paid by MS. CANDACE L. CURTIS.

19 WITNESS MY OFFICIAL HAND this the 7th day of  
20 April, 2022.

21  
22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 10-31-22  
25 Official Court Reporter  
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