

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

**ORDER GRANTING CO-TRUSTEES’ MOTION TO EXCLUDE
TESTIMONY/EVIDENCE, FOR SANCTIONS AND/OR
FOR THIRD CONTEMPT AS TO CANDACE LOUISE CURTIS**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

On the _____ day of _____, 2022, the Court considered the Co-Trustees’ Motion to Exclude Testimony/Evidence, for Sanctions and/or For Third Contempt as to Candace Louise Curtis (the “Motion”) **and** the Co-Trustees’ First Supplemental Motion to Exclude Testimony/Evidence, for Sanctions and/or For Third Contempt as to Candace Louise Curtis (the “Supplemental Motion”)

In addition to the Motion and Supplemental Motion, among the filings considered by the Court are:

1. 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);
2. 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”);
3. 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
4. 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 Court also considered the arguments of counsel and took judicial notice of the pleadings on file in this cause.

As part of its consideration of this matter, the Court considered the Co-Trustees’ objections to the purported Unsworn Declaration of Candice Schwager and the purported Affidavit of Candice Louis Curtis submitted as part of Curtis’s Response. The Court **FINDS** that the Unsworn Declaration and the Affidavit fail to comply with the Texas Rules of Evidence and/or the Texas Rules of Civil Procedure for one or more of the reasons described by the Co-Trustees in their Reply to Curtis’s Response. Accordingly, the Court **ORDERS** as follows:

<u>Description</u>	<u>Objection to Exhibit</u>	<u>Disposition</u>
Unsworn Declaration of Candice Schwager	Violates Chapter 132.001 of the Texas Civil Practice and Remedies Code; contains hearsay; contains conclusory, unsupported assertions and conclusions of fact and law; and is not readily controvertible.	<p>_____ Sustained</p> <p>_____ Overruled</p>
Affidavit of Candice Louis Curtis	Lacks a Jurat; is not notarized; contains hearsay; contains conclusory, unsupported assertions and conclusions of fact and law; and is not readily controvertible.	<p>_____ Sustained</p> <p>_____ Overruled</p>

Taking judicial notice of its file, the Court **FINDS** and **CONFIRMS** that:

- On July 23, 2019, Candace Louise Curtis (“Curtis”) was held in contempt of this Court’s Order of February 14, 2019. Curtis was fined \$500.00 and ordered to pay attorney’s fees in the amount of \$1,975.00, and Curtis has failed to pay the foregoing sums despite ample time and opportunity to do so.
- On December 12, 2019, a second order of contempt was entered against Curtis. She was again fined \$500.00, and Curtis has failed to pay the foregoing sum despite ample time and opportunity to do so.
- Curtis has violated both contempt orders and remains in contempt.

The Court **FURTHER FINDS** that on August 13, 2020, Curtis was ordered to appear for deposition (the “Deposition Order”). Curtis violated the Deposition Order by failing to appear for her deposition, as confirmed by the Stipulation of her attorney and the Certificate of Non-

Appearance attached as Exhibits to the Co-Trustees' Motion. The Court expressly and explicitly **FINDS** that Curtis's violation of the Deposition Order through her willful and intentional noncompliance constitutes bad faith.

The Court **FURTHER FINDS** that Curtis's repeated, habitual violations of this Court's Orders constitute egregious misconduct. It is apparent from the record that there is nothing this Court can do and there is no lesser sanction that will promote Curtis's compliance with this Court's Orders or with the Texas Rules of Civil Procedure.

Based on her bad faith and her egregious conduct and in light of the Order Granting Co-Trustees' Motion for Summary Judgment as to Candace Louise Curtis Only (the "Summary Judgment Order), as well as The Brunsting Family Living Trust a/k/a The Restatement of The Brunsting Family Living Trust (the "Trust"), the Court **FINDS** that the Co-Trustees' Motion/Supplemental Motion has/have merit and is/are **GRANTED**. Accordingly, through its inherent powers, through Texas Rules of Civil Procedure 215.2(b), through Texas Rules of Civil and/or Procedure 13, the Court **FINDS** that the following sanctions fit within recognized guidelines for "regular sanctions" and "death penalty sanctions." Therefore, based on the FINDINGS above and/or by virtue of the Summary Judgment Order and operation of the Trust, it is ORDERED that:

- (1) all facts presented by the Co-Trustees in opposition to Curtis's claims and causes of action and/or in support of their counterclaims against Curtis are **DEEMED TO BE ESTABLISHED** for the purposes of this 401-proceeding;
- (2) the Court **REFUSES TO ALLOW THE DISOBEDIENT PARTY**, Curtis, to support her claims and/or defenses, or to oppose the Co-Trustees claims and/or defenses;
- (3) Curtis is **PROHIBITED** from introducing exhibits, testimony, or other matters into evidence;
- (4) the entirety of Curtis's pleadings in this 401-proceeding are **STRICKEN**;

- (5) Curtis’s affirmative claims against the Co-Trustees are **DISMISSED WITH PREJUDICE**;
- (6) a **JUDGMENT/DEFAULT JUDGMENT IS ENTERED** against Curtis relative to the Co-Trustees counterclaims against Curtis in this 401-proceeding; and/or
- (7) in addition to other sanctions imposed, Curtis is again **FOUND** to be in **CONTEMPT** of Court.

The Court **FURTHER FINDS** that to the extent Curtis’s Response references her Bill of Review pending in the 404-proceeding, its additional argument in support thereof is: (a) not properly before this Court in this 401-proceeding; (b) provides no legitimate grounds for Curtis’s defiance of the Deposition Order and/or other egregious conduct; and does not preclude this Court’s entry of death penalty sanctions.

The Court **FURTHER FINDS** and **ORDERS** that insofar as Curtis’s Response appears to include an affirmative request for sanctions against “Defendants,” Curtis’s affirmative request lacks merit, has no basis in fact or law, and is in all ways **DENIED**.

SIGNED AND ENTERED on this ____ day of _____, 2022.

JUDGE PRESIDING