

NO. 412,249-401

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

NOTICE OF APPEAL

This Notice of Appeal is filed by CANDACE LOUISE CURTIS, Appellant, challenging the Probate Court's February 14, 2019 Order Denying Appellant's Plea to the Jurisdiction; the

Order dated February 25, 2022, granting summary judgment against Candace Louise Curtis on Defendant Anita and Amy Brunsting's alleged counter claims, as well as any other rulings subsumed within Cause No. 412249-401; Carl Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs. Anita Brunsting, et al.; in Harris County Probate Court No. 4, pursuant to Texas Rule of Appellate Procedure 25.1. Appellant appeals to the Court of Appeals for the First District of Texas, sitting in Houston, Texas. A related original proceeding has been previously filed in the First Court of Appeals, Cause No. 01-22-00514-CV; In re Candace Louise Curtis (2022).

Harris County Probate Court lacks jurisdiction over *any claims* asserted by Candace Louise Curtis against Anita Brunsting or Amy Brunsting, which were not filed in, transferred to, or remanded to Harris County Probate Court from the U.S. District Court, as well as any purported *counter-claims*. Candace Louise Curtis filed suit against Amy and Anita Brunsting in *Cause No. 4:12-cv-00592 (S.D. Tex. 2012), Candace Louise Curtis vs. Anita and Amy Brunsting, et al.* The 5th Circuit Court of Appeals reversed dismissal of Curtis' claims under the probate exception to diversity jurisdiction on January 9, 2013, remanding for further proceedings. *Cause No. 12-20164; Candace Louise Curtis vs. Anita and Amy Brunsting (S.D. Tex. 2013).*

Injunctive relief was granted, which remain in effect and is the subject of Curtis' registration of foreign judgment in *Cause No. 2020-35401; Candace Louise Curtis vs. Anita and Amy Brunsting*. After the federal district court granted injunctive relief, independent executor Carl Brunsting filed suit against Anita Brunsting, Amy Brunsting, Carol Brunsting, and Candace Louise Curtis (nominal Defendant) in Harris County Probate Court, seeking declaratory judgment of rights and liabilities of the parties. Curtis' claims were improperly ordered remanded to the probate court, where it was improperly accepted as if it was a transfer. This resulted in administrative closure of the federal case, but at no time did Candace Louise Curtis sue Anita or Amy Brunsting in probate court. For the same reason, the court lacks jurisdiction over Anita and Amy Brunsting's alleged counter-claims.

RELATED PROCEEDINGS:

- 1. Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting, and Does 1-100, Cause No. 4-12-cv-00592 (S.D. Tex. 2012).** Defendants contend that Plaintiff's claims were remanded or transferred to Harris County Probate Court No. 4 via Cause No. 412249-402, which was allegedly consolidated with 412249-401. This is plainly false. It never occurred as a matter of law. This is the basis of this appeal; that Candace Louise Curtis' claims against Amy Brunsting and Anita Brunsting were never filed in, transferred to, or removed from Harris County Probate Court No. 4.

2. Cause No. 412248 Estate of Elmer H. Brunsting, deceased, (Harris County Probate Court No. 4, admitting pour over will to probate, August 28, 2012
3. Cause No. 412249 Estate of Nelva E. Brunsting, deceased, (Harris County Probate Court No. 4, admitting pour over will to probate, August 28, 2012
4. Cause No. 412249-401; Carl Henry Brunsting, Individually and as independent executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs. Anita K. Brunsting et al (Probate No. 4); inaccurately re-styled as Estate of Nelva Brunsting.
5. Cause No. 412249-402; Estate of Nelva Brunsting, deceased; File created February 9, 2015, and purported to be the remanded claims of Candace Louise Curtis vs. Amy Brunsting and Anita Brunsting.
6. Cause No 2020-35401, In the District Court of Harris County, Texas, 151st District-Registration of Foreign Judgment June 12, 2020, registering temporary injunction issued by the Southern District of Texas federal court on April 9, 2013 in Candace Louise Curtis vs. Anita Brunsting and Amy Brunsting.
7. Cause No. 01-22-00378; Candace Louise Curtis vs. Carl Henry Brunsting, Individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting; (1st Court of Appeals 2022); - appeal of Cause No. 412249-401 withdrawn.

LACK OF SUBJECT MATTER JURISDICTION

- A.* Candace Curtis' federal lawsuit against Amy and Anita Brunsting, Cause No. 4:12-cv-592, in the Southern District of Texas, was never lawfully remanded to the Probate Court because it was never removed from any State Court.
- B.* Candace Curtis' federal lawsuit against Amy and Anita Brunsting, Cause No. 4:12-cv-592, in the Southern District of Texas, was never lawfully transferred to Harris County probate court.
- C.* The Probate Court had no jurisdiction over purported counterclaims of Amy and Anita Brunsting against Candace Louise Curtis, which were waived, and time barred under T.R.C.P. 97(a) and time barred under Tex. Civ. Prac. & Rem. Code 16.004.
- D.* The Probate Court lacks jurisdiction over Candace Louise Curtis' registration of foreign judgment.
- E.* The Probate Court had no jurisdiction over Carl Brunsting's civil tort claims filed after the Estate was closed and dropped from the active docket. Tex. Govt. Code § 25.0021.

F. The Probate Court has no authority to assert ancillary jurisdiction over civil tort claims in a pour over will after approval of the inventory. Without a pending estate administration, a statutory probate court lacks subject matter jurisdiction over matters filed as ancillary and Texas Estates Codes 32.005, 32.006, 32.007 cannot be taken out of the context of Title II. (see Tex. Govt. Code § 25.0021)

G. Carl Brunsting's resignation as independent executor of the Estate of Nelva Brunsting deprived the Probate Court of jurisdiction over ancillary claims.

H. The Probate Court is bound by prior federal court rulings concerning fact and law by the doctrines of res judicata and collateral estoppel and has no jurisdiction to alter it.

I. Visiting Judge had no jurisdiction to grant summary judgment against Candace Louise Curtis' claims without first rendering judgment in open court.

J. The Probate court had no jurisdiction to order that Candace Louise Curtis forfeited her property interest by seeking specific performance, to enforce the trust according to its terms.

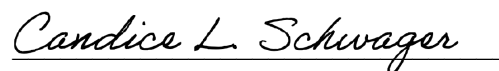
K. Without issuing declaratory judgment, identifying the documents that comprise "the trust," the Court lacked jurisdiction to determine that Curtis violated a no-contest provision.

L. The Court lacks jurisdiction over the Trust of Elmer H. Brunsting

M. The Court lacks jurisdiction to order attorneys' fees from the Family Living Trust or any resulting trust, due to express language prohibiting the payment of attorney fee creditors, voluntarily or involuntarily.

Appellant Candace Louise Curtis reserves the right to amend this Notice of Appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I Candice Schwager hereby certify that the foregoing document was served on the following individuals this 26th day of April, 2023:

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