

[Status Conference](#) re **Estate of Elmer & Nelva Brunsting No. 412249-403** to be held in person on Thursday, February 1, 2024, at 9:30 a.m. in the Harris County Probate Court No. 4.

**Estate of Nelva Brunsting No. 412249-401** and by necessary implication Estate of Nelva Brunsting No. 412249-402 and 403 are currently in the 1st District Court of Appeals. The 1st District Court of Appeals has indicated they will decide the appeal on February 13, 2024 without oral argument.

### **Status of the 412249-403**

The status of **Estate of Nelva Brunsting No. 412249-403** is that Plaintiff Carl Henry Brunsting filed this case in the district court then resigned as independent executor of the estates of Elmer H. and Nelva E. Brunsting in February 2015 and [no successor has been appointed](#). The -403 matter was transferred to the probate court from the district court without a pending probate so it's not really in the probate court and it's not fully out of the district court.

The questions presented by the absence of a Plaintiff in the -403 are numerous but for purposes of status there are only two. (1) Who has standing to prosecute those claims, the representative for a legal fiction called "estate" or the real parties in interest; the successor beneficiaries of the sole devisee living trust and (2) which court has the jurisdiction to answer the first question?

The -403 matter has been placed on judicial hold pending a determination by the First District Court of Appeals on the question of whether Harris County Statutory Probate Court No. 4 has jurisdiction over any of the matters filed as ancillary to estate of Elmer H. Brunsting No. 412248 or estate of Nelva E. Brunsting No 412249.

### **The 2016 RICO Allegation**

We accused the attorneys participating in the probate charade of collusion in 2016 and [they all lied](#). Those lies are now floating to the top of the cesspool.

### **1<sup>st</sup> District Court of Appeal**

Candace Curtis [Notice of Appeal](#)

Appellants [Opening Brief](#)

Appellants [Appendix of Exhibits](#)

Then, in their pleadings before the 1<sup>st</sup> District Court of Appeal they made it rather clear that they were colluding together against the federal plaintiff they had defrauded with their fake probate charade.

2023-07-27 Agreed [Motion to Extend Appellee Deadline](#)

2023-08-31 Appellees opposed [2<sup>nd</sup> Motion to extend time](#) for filing Appellee Brief

When they finally filed their answer it was nothing but an ad hominem rant

2023-10-02 [Appellees Brief](#)

2023-11-01 [Appellants reply brief](#) nails the lid on the appellees game coffin but leaves a way out. The Appeal is a dead ringer but it becomes moot if at any point there ceases to be a controversy among the parties >>> \$\$\$\$. They just have to get the wind blowing in the right direction.

### **Procedural History**

Cause No. 412,249-403 Carl Henry Brunsting, independent executor of the estates of Elmer H. and Nelva E. Brunsting vs Vacek & Freed P.L.L.C. was originally filed in Harris County District Court 164 as Cause No. 2013-05455 on January 29, 2013.

Harris County District Court 164 Cause No. 2013-05455 was transferred to Harris County Statutory Probate Court No. 4 by Order signed in Cause No. 412249-401 February 14, 2019 and became Cause No. 412,249-403 by District Court Order dated April 4, 2019.

Cause No. 412,249-403 remains in stasis in Harris County Probate Court No. 4 pending a determination on the question of jurisdiction, currently pending before the First District Court of Appeal in Cause No. 01-23-00362-CV.

### **THE SUBSTANCE OF THE CONTROVERSY:**

This entire controversy was caused by [improper changes](#) to the Brunsting Trust implemented by the Vacek & Freed Law Firm after Elmer Brunsting was certified non compos mentis.

All of the instruments allegedly signed by Nelva after Elmer's incapacity [June 2008] are invalid for a very fundamental reason as explained by [Texas Property Code 112.034\(a\)](#). Legal and equitable titles must remain separate of the trust fails. Even if Nelva had the powers claimed to have been exercised, she could not exercise plenary jurisdiction over either trust share without causing merger. A Court of competent jurisdiction would have to stand in for the absent trustee to avoid merger as clearly stated in [Article III](#). This controversy was caused by improper changes to the Brunsting Trust and then exacerbated and exploited by collusion among the attorneys in pursuit of their own unjust self-enrichment. The most important thing Candace Freed said at her deposition is that [she couldn't pass the board certification exam if she tried](#). [P.141]

The [2005 Restatement](#) as [Amended in 2007](#) are the only valid trust instruments. The 2007 Amendment was the last instrument signed by both Settlers. Carl and Candace are the de jure trustees. Anita and Amy have been manipulated into challenging the trust.

### **OVERVIEW ANALYSIS**

This is a classic example of a color of law confidence game. It is a chronology of a long con<sup>1</sup> with two parts, a front and a back. On the front end we have an estate planning bait and switch in

---

<sup>1</sup> **long con**

1. an elaborate confidence game that develops in several stages over an extended period of time wherein the con man or swindler gains the victim's trust, often bypassing small profits with the goal of reaping a much larger payout in the final maneuver: The key to pulling off a long con is giving your marks the illusion of control while you and your team manipulate their choices.

which an ageing American couple is sold an asset protection package. The promises made are that the estate planning law firm's products and services will avoid guardianship for the benefit of the clients; and avoid probate while facilitating the convenient and trouble free transfer of family generational assets in equal proportions for the heirs.

Unfortunately, the front end is a setup designed for the location of family generational assets and the creation of controversy leading to the back end exploitation that facilitating 3<sup>rd</sup> party predator interception of family generational asset transfers. On the front end the Grifters use a variety of artifice to manufacture controversy but the key is to build confidence, while manufacturing a controversy that will not show up until their clients pass and there is no one alive to say "that's not true".

A key element in this long con process is the late term creation of illicit instruments altering long standing estate and trust plans. Illicit change instruments play a vital role in creating the controversy exploited by the 3<sup>rd</sup> party predators on the back end. In order to create controversy on the front end the estate planning Grifter must be able to identify the weak link in the family moral fabric and we will always see selfish, greedy, narcissistic, jealous, envious, spiteful, resentful and other human frailties as overtones.

In terms of legal theory none of those conditions is relevant to the question of fiduciary obligations and specific performance and what instruments define those matters determined on the basis of contract law and the common law of trusts.

### **WHAT IS A TRUST?**

*A trust is a mechanism used to transfer property. Bradley v. Shaffer, 535 S.W.3d 242, 247 (Tex. App.—Eastland 2017, no pet.); Hallmark v. Port/Cooper-T. Smith Stevedoring Co., 907 S.W.2d 586, 589 (Tex. App.—Corpus Christi 1995, no writ).*

#### **The Indenture**

A trust, in property law, is a specific type of private law contract defining a relationship relating to property. Trusts are governed according to the general law of contracts. The trust contract is referred to as an indenture because the "Trustee", holds a position of fealty "fiduciary obligation" whereas the cestui que, commonly referred to as the "beneficiary" holds a position of right. The trustee holds bare legal title to the Corpus (property) of the trust for the sole purpose of performing the obligations entrusted for the enjoyment of the beneficiary.

The hierarchy of controlling law is the trust indenture, then the trust code. If neither the indenture nor the code addresses the subject, the common law is controlling. The public policy parameters within which trusts must confine their operation are covered in Title 9 of the Texas Property Code, [a/k/a the trust code].

### **SUBSTANTIVE COMPONENTS**

#### **Separation of Legal and Equitable Title**

In distinguishing trusts from other kinds of legal relationships there are two vital distinctions to be noted. The first is separation of legal and equitable title wherein a fiduciary (loyal and

trustworthy) holds the bare legal title to property and the beneficiary (deserving of a windfall) holds the equitable title and right to enjoy the property. The beneficiary is considered the true property owner.

For a trust relationship to exist the separation of legal and equitable title must be maintained, Texas Property Code § 112.034, because when legal and equitable titles are held by the same person merger occurs and either the trust fails or no trust is created. When merger of legal and equitable titles occurs the property is held by the beneficiary in their individual capacity and is not protected by the trust relationship.

### **Enforceable duties**

The second aspect of a valid trust is the Imposition of enforceable (fiduciary) duties on the holder of legal title. Precatory language is insufficient. The duties of the trustee must be legally enforceable by the beneficiary and not merely moral or ethical. The imposition of affirmative and enforceable duties is called “executing the uses”, which finds origin in King Henry’s Statute of Uses of 1535. If the trustee has no enforceable affirmative obligations to perform for the benefit of the beneficiary, the trust becomes dry and both legal and equitable titles merge in the beneficiary as no trust relationship exists. *See Property Code § 112.032*. This is the framework in which I will explain the bait and switch rupture of the Brunsting Family Living Trust.

## **PREROGATIVE POWERS**

### **Qualified Beneficiary Designation**

According [Article III](#) of the [2005 Restatement](#) to the trust indenture either beneficiary (A or B) could execute a Qualified Beneficiary Designation (QBD) as to their share alone.

### **Testamentary Power of Appointment**

After the passing of the 1<sup>st</sup> Settlor to die, the corpus was divided into two separate shares that we refer to for convenience as the Survivors Trust and the Decedents Trust ([Article VII](#) Section D). The trust indenture also provided the Surviving Settlor with a Testamentary Power of Appointment (TPA) ([Article VIII Section C](#)) over the assets in the Decedents Trust.<sup>2</sup>

### **The Brunsting Family Living Trust**

Pursuant to [Article III](#) changes to the original trust indenture could only be made with the (1), the signature of both settlors or, (2) the approval of a court of competent jurisdiction but would become irrevocable at the passing of the 1st settlor to die.

---

<sup>2</sup> I dispute the existence of this testamentary power both in substance and in its very appearance in the trust. In substance the exercise of this power would result in merger and the trust would fail. The Testamentary Power of Appointment provision appears to have been inserted into the indenture using the sleight of hand the trust was designed to facilitate. Page 9-2 was removed and replaced with pages 9-2 and 9-3. The preceding page remained 9-1 and the following page remained 10-1. However, there can be no power to change at death what one could not alter in life and this alleged QBD/TPA not only mixes the QBD and TPA powers in one instrument without distinguishing one from the other, it fails to contain the signatures of two disinterested witnesses as required of a testamentary instrument.

According to the Defendants, after the incapacity and death of Settlor “A” the remaining settlor continued to serve alone. They also argue that Trustee “B” exercised both powers together in one instrument called “*Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement*”.

This instrument faces insurmountable obstacles beyond forgery, the combining of incompatible powers QBD/TPA without distinction or the fact that it fails to contain the signatures of two disinterested witnesses as required of a testamentary instrument. Most importantly it fails to recognize the vacancy in the office of trustee for beneficiary “B” and, that the plenary exercise of either power by the remaining Settlor would result in the merger of legal and equitable titles thus extinguishing the trust [[Tex. Prop. Code §112.034](#)]. Those changes could only be made with the approval of a court of competent jurisdiction as Settlor “B” had no power to extinguish the trust.

Once Settlor “A” was incapacitated the office of Trustee for Beneficiary “B” was vacant. The exercise of any power to alter the trust, held by remaining Settlor/Trustee/Beneficiary “B”, would require a court of competent jurisdiction to stand in for Trustee “A” in order to validate and approve the proposed changes in order to avoid merger. None of the instruments dated after Elmer’s incapacity (June 9, 2008) were signed by Elmer; none of the instruments dated after Elmer’s incapacity were approved by a court of competent jurisdiction and thus, none of the instruments dated after Elmer’s incapacity can be considered valid as affecting any part of the trust. It’s that simple!

### **TRUST INSTRUMENT AND EVENT CHRONOLOGY**

The following hyperlinks are to the documents. The page numbers (P.?) are to the [0 - Front End thru Nelva passing 11-11-2011.pdf](#) file where these instruments can all be reviewed.

**[1996 Family Trust](#) (P.8) Elmer and Nelva Original Co-Trustees Successor Anita (Article IV)**

**1997 [Irrevocable Life Insurance Trust](#) – Anita only trustee [This trust has been settled]**

**1999 Family Trust [1<sup>st</sup> Amendment](#) (P.66) Elmer and Nelva Original Co-Trustees No change to Article IV successor trustee designation**

**2001 Family Trust [2<sup>nd</sup> Amendment](#) (P.68) Elmer and Nelva Original Co-Trustees No change to Article IV successor trustee designation**

**[2005 Family Trust Restatement](#) (P.75) Elmer and Nelva Original Co-Trustees Article IV successor trustee designation changed to Carl and Amy Successor Co-Trustees (Anita removed)**

**[2007 Amendment to the Family Trust Restatement](#) (P.195) Elmer and Nelva Original Co-Trustees Article IV successor trustee designation changed to Carl and Candace Successor Co-Trustees. (Amy removed)**

This was the last valid change as nothing after this was signed by both settlors, or approved by a court of competent jurisdiction, as required by [Article III](#). Creating the initial certificates of trust after Elmer's passing would follow as a matter of course as those actions were already prescribed by the trust and did not attempt to alter or amend any substantive provisions. However, changes alleged to have been made by Nelva alone would trigger Merger and the trust would fail. [[Tex. Prop. Code 112.034](#)] Nelva had no such authority and, as none of the instruments following Elmer's incapacity were approved by a court standing in for the absent co-trustee, none can be held valid.

#### [JUNE 2008 ELMER DECLARED NON COMPOS MENTIS](#)

The law firm that drafted the following instruments is responsible for negligently manufacturing the controversy that the other law firms have attempted to exploit in pursuit of their own unjust enrichment. This appears to be a common frontend/backend Grift scenario facilitating the 3<sup>rd</sup> party interception of these kinds of family generational asset transfers.

1. July 1, 2008 Certificate of Trust alleged to have been signed by Nelva alone ([P.203](#))
2. July 1, 2008 Appointment of Successor trustees alleged to have been signed by Nelva alone (P.205)

#### [APRIL 1, 2009 ELMER BRUNSTING PASSED](#)

3. Feb. 24, 2010 Certificate of Survivor's Trust alleged to have been signed by Nelva alone (P.210)
4. Feb. 24, 2010 Certificate of Decedent's Trust alleged to have been signed by Nelva alone (P.212)
5. February 24, 2010 General warrantee deed re 13360 Pinerock alleged to have been signed by Nelva alone (P.349)
6. June 15, 2010 QBD/TPA (P239) alleged to have been signed by Nelva alone

#### [JULY 30, 2010 CARL IS IN COMA](#)

Anita is Telling Candace Kunz-Freed to: "[Change the Trust](#)". Candace Kunz-Freed in concert with Bernard Lisle Mathews had already created instruments that improperly named Anita Brunsting as successor trustee in 2008 that they kept secret.

7. [August 25, 2010 QBD/TPA](#) alleged to have been signed by Nelva alone
8. August 25, 2010 QBD/TPA [Appointment of Successor Trustees](#) alleged to have been signed by Nelva alone
9. August 25, 2010 Certificate of Family Trust ([P.249](#)) Notary Stamp March 27, 2011 alleged to have been signed by Nelva alone

10. August 25, 2010 Certificate of Decedents Trust ([P.251](#)) successor trustee designation Anita Kay Brunsting and Amy Ruth Tschirhart alleged to have been signed by Nelva alone
11. August 25, 2010 Certificate of Survivors Trust ([P.253](#)) successor trustee designation Anita Kay Brunsting and Amy Ruth Tschirhart alleged to have been signed by Nelva alone
12. August 25, 2010 Certificate of Family Trust ([P.255](#)) alleged to have been signed by Nelva alone - successor trustee designations Anita Kay Brunsting and Amy Ruth Tschirhart
13. August 25, 2010 Certificate of Decedents Trust ([P.257](#)) alleged to have been signed by Nelva alone - successor trustee designation Anita Kay Brunsting and Amy Ruth Tschirhart
14. August 25, 2010 Certificate of Survivors Trust ([P.259](#)) alleged to have been signed by Nelva alone - successor trustee designation Anita Kay Brunsting and Amy Ruth Tschirhart
15. December 21, 2010 Certificate of Decedents Trust ([P.291](#)) Anita Brunsting Trustee with Amy as Successor (Signed by Anita)
16. December 21, 2010 Certificate of Family Trust ([P.294](#)) Anita Brunsting Trustee with Amy as Successor (Signed by Anita)
17. December 21, 2010 Certificate of Survivors Trust([P.297](#)) Anita Brunsting Trustee with Amy as Successor (Signed by Anita)
18. December 21, 2010 Appointment of Successor Trustees ([P.301](#)) alleged to have been signed by Nelva alone
19. December 21, 2010 Resignation of Original Trustee ([P.307](#)) alleged to have been signed by Nelva alone
20. Another Barrage of illicit instruments ([P.319](#)) is followed by changes to all of the trust accounts.

#### *NELVA BRUNSTING PASSED NOVEMBER 11, 2011*

This has thus far been a simple chronology of the front end flim flam invariably leading to controversy and intended to be followed by feigned litigation schemes exploiting the front end by manufacturing fees for legal services and as shown in the case in point, and holding the family of trust beneficiaries hostage to ransom demands while resolving nothing of substance relating to the controversy among the real parties in interest.

Let's begin with the absence of a Declaratory Judgment defining the valid trust instruments. It is as easy as I just explained it. The last valid trust instruments, [2005 Restatement](#) and [2007 Amendment](#), named Carl and Candace as the co-trustees. After Elmer's June 9, 2008 Certification of incapacity Nelva could not make any changes without a court of competent jurisdiction standing in for Elmer in order to avoid merger of legal and equitable titles. [[Tex. Prop. Code 112.034](#)] None-the-less numerous illicit change instruments were created by the Vacek law firm between the incapacity of Elmer Brunsting June 9, 2008, the passing of Elmer Brunsting April 1, 2009 and the passing of Nelva Brunsting on November 11, 2011. Carl and Candace are the de jure Successor Co-Trustees as a matter of law and this is all a matter of an often repeated routine.

The memorandum of [preliminary injunction](#) found anomalies with the instruments Anita presented as "the trust". Anita had attempted to blend portions of the 1997 Irrevocable Life Insurance trust with portions of the 2005 Restatement when these are completely separate and distinct having no connection what-so-ever. The 1997 Irrevocable Life Insurance trust had already been settled.

Article XII E required at least bi-annual accounting which Anita was unable to perform resulting in the [appointment of a Special Master](#) to assemble books and records of accounts. That report showed numerous improprieties by Anita Brunsting including [self-dealing and unequal distributions](#) that had not been revealed to Carl or Candace.

## **SIGNIFICANT PARTICIPANTS**

### *A. Trust beneficiary Candace Curtis*

Candace is the eldest of five successor beneficiaries to her parents A/B trust. Candace is the only sibling that lives outside of Texas and after figuring out what Anita was up to, Candace requested an accounting and when Anita was unable to provide an accounting Candace filed suit in Southern District of Texas seeking an accounting and fiduciary disclosures.

### *B. Trust Beneficiary Anita Brunsting*

As previously noted, in the original 1996 trust agreement Elmer and Nelva were the Original Co-Trustees with Anita (Article IV) as the sole successor. However, Anita kept returning to the well needing more and more money until Elmer and Nelva removed Anita as successor trustee, replacing her with the [2005 Restatement](#) naming Carl and Amy as successor co-trustees.

I won't play the psychologist or attempt to identify the factors but I will point out what was [stated on page 20 of 28](#) in Candace original petition for relief No.4:12-cv-592 filed in the Southern District of Texas by Candace Curtis February 27, 2012.

*The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our*



*Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.(P-16, 2 pgs.)*

It is [abundantly clear in hindsight](#) that Anita planned to steal the family trust shares of siblings Carl and Candace by causing litigation to be brought so she could advance a theory that, if assumed as true, would enlarge her interest in the trust; as clearly prohibited by [Article XI Section C of the 2005 Restatement](#) (p.70). That theory would claim that suing the imposter trustee without her permission would trigger forfeiture and using the corruption of blood provisions in the [8/25/2010 QBD/TPA](#) to keep the beneficiary's successors from receiving what Elmer and Nelva would have intended and enlarging her share by reducing the total number of beneficial interests. The very theory that the beneficiary suing the trustee to compel performance triggers forfeiture is ludicrous. Article XII Section B states as follows:

*Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts. [Brunsting trust Article XII Section B](#) (copy of Restatement received from Anita Brunsting October 23, 2010)*

Thus, even if Anita were a de jure trustee, advancing such a theory would exceed her power as a trustee and easily interpreted as just one more challenge to the settlors trust.

#### *C. Trust Successor Beneficiary Amy Brunsting*

[Anita seized control](#) away from Nelva in December 2010 and Amy was not to become successor co-trustee until after Nelva's passing. Amy has attempted to divorce herself by giving Anita her POA for conducting trust business as she has never had control of the money. Anita seized control working with Kunz-Freed and has never divided the Survivors and Decedents trusts into five separate shares, one for each successor beneficiary, or terminated the Survivors and Decedents trusts and have never distributed trust income to the five trust beneficiaries incurring extreme tax injuries for that failure. Amy filed a false affidavit in the Southern District of Texas No. 4:12-cv-592 on March 6, 2012 [[Doc 10-1](#)] stating that five separate shares had been set up for the beneficiary but those have never manifest.

#### *D. Estate Planning Attorney Candace Kunz-Freed Vacek Law firm representing Elmer and Nelva Brunsting and also representing Anita and Amy Brunsting after cultivating conflicting interests*

Freed notes July 30, 2010 Anita called "[Change the Trust](#)"

- E. *Estate Planning Attorney Bernard Lisle Mathews, staff attorney with Vacek Law firm representing Elmer and Nelva Brunsting and then representing Anita and Amy Brunsting in SDTX under the law firm name Green & Mathews*
- F. *Mills Shirley Attorneys*
  - a. *George Vie III representing Anita and Amy Brunsting in SDTX (2nd attorneys)*
  - b. *Maurene McCutcheon representing Anita and Amy Brunsting in Probate court No. 4 (2nd attorneys)*
- G. *Attorney Stephen Mendel representing Anita Brunsting (3d attorney)*
- H. *Attorney Neal Spielman representing Amy Brunsting (3d attorney)*
- I. *Trust Beneficiary Carl Brunsting*

Carl is one of five beneficiaries to his parents A/B trust. Carl is named as a successor co-trustee with his sister Candace in the [2007 Amendment](#), the last instrument signed by both trust settlors. Carl suffered catastrophic illness leaving him in coma in early July 2010. It was at this juncture that Anita in concert with Candace Kunz-Freed made their most heinous intentions obvious with their [continued series of illicit change instruments](#).

- J. *Attorney Bobbie G. Bayless for Carl Brunsting Individually and as Independent executor and then, attorney for Drina Brunsting as Carl's alleged attorney in fact*
- K. *Trust Beneficiary Carole Brunsting (Named Defendant in Bayless probate Court filing)*
- L. *Attorney Darlene Payne-Smith for Carole Brunsting (Counter sued Carl in the probate charade)*
- M. *Estate Planning Attorney's Malpractice Insurance Company Attorneys with Thompson Coe;*
  - a. *Attorney Corey Reed &*
  - b. *Attorney Zandra Foley*
- N. *Attorney Jason Bradley Ostrom (Deceased) Candace Curtis back stabbing former counsel that colluded with Bayless to get his client's case, this case, out of the federal court and into probate theater where they could treat the family trust like it was their money cow.*
- O. *Attorney Gregory Lester*

Attorney Gregory Lester was brought in as Temporary Administrator for the purpose of evaluating the claims. Lester never identified a single claim but immediately aided and abetted the 8/25/2010 QBD/in Terrorem Clause ruse. His billing record shows that he spent all of his

time with Spielman pretending to write an analysis rather than a ludicrous script. It was ordered that Greg Lester was to be [paid from the estate](#).

*P. Attorney Jill Willard Young as attorney for Greg Lester*

Jill Young secured a continuance in the Plaintiff less District Court Case (Currently the Estate of Nelva Brunsting No. 412249-403). It was Ordered that Jill Young was to be [paid from the estate](#). Anita Brunsting paid both Greg Lester and Jill Young from the trust. There is no estate

**LIST OF CASES RELATED BY OPERATIVE FACTS AND PARTICIPANTS**

**SDTX No. 4:12-cv-592**

- I. [SDTX No. 4:12-cv-592](#) Candace Louise Curtis vs Amy Brunsting, Anita Brunsting and Does 1-100, a breach of fiduciary action seeking accounting and disclosures filed 2/27/2012. Filed Pro se!
- II. [5th Circuit ROA.12-20164](#) – Curtis v Brunsting 704 F.3d 406 (pro se appeal)
- III. **Harris County District Court 180** [Bayless files for Depositions before suit](#)
- IV. [Harris County District Court 164 Cause No. 2013-05455](#), a malpractice action against the estate planning attorneys **filed by Carl Brunsting** as “independent executor” of his Parents estate, filed January 29, 2013. Carl resigned the office of “independent executor” February 19, 2015 and there has been no plaintiff in this case since.
- V. [Harris County Probate Court No. 4 Cause No. 412249-401](#), a civil tort action exclusively related to the Brunsting trust **filed by Carl Brunsting** on April 9, 2013, the same day as the injunction hearing in SDTX No. 4:12-cv-592.
- VI. [Harris County Probate Court No. 4 Cause No. 412249-402](#) – the federal case was remanded to Harris County Probate Court No. 4 May 14, 2014.
  - a. The “[remand order](#)” was accepted in Probate Court No. 4 as a “[transfer order](#)” on May 22, 2014; converted into “*Estate of Nelva Brunsting No. 412249-402*” and then Dissolved into *Estate of Nelva Brunsting No. 412249-401*, which is **the case brought by Carl Brunsting** both individually and as “independent” executor on April 9, 2015.
- VII. [Curtis et al., vs. Kunz-Freed et al., SDTX No. 4:16-cv-1969](#), an honest services fraud case brought under the racketeer influenced corrupt organization statutes filed July 5, 2016: dismissed for failure to state a claim.
  - a. [5th Circuit ROA.17-20360](#) affirmed for lack of a sufficient statement of supporting facts June 28, 2018.
- VIII. [Registration of Foreign Judgment, Submission ID: 43704956](#), filed with Harris District Clerk on June 12, 2020, domesticating the federal preliminary injunction. The Foreign Judgment was not challenged by the respondents within 30 days as required and thus, the Foreign Judgment became a final judgement on July 12, 2020.
- IX. [412249-403](#) – This is case #3 supra, Harris County District Court 164 Cause No. 2013-05455 [ordered transferred to Harris County Probate Court No. 4](#) on April 4, 2019,

without a pending probate administration to be ancillary to and, where it remains without a plaintiff as of Carl Brunstings' February 17, 2015 resignation. (See *Narvaez v Powell*)

*Haight v. Koley Jessen PC, No. 10-18-00057-CV, at \*4-5 (Tex. App. June 12, 2019)* (“In *In re Hannah*, the court held that a cause of action brought in the district court was not a “matter related to a probate proceeding” within the scope of [Section 31.002 of the Estates Code](#). In *re Hannah*, [431 S.W.3d at 809](#). The court focused on the nature of the damages sought, and held that because the suit sought damages which would, if awarded, be satisfied from the defendant's individual assets rather than from any property of the estate, the claims were not related to a probate proceeding. In *re Hannah*, [431 S.W.3d at 809-811](#). In *Narvaez*, the court agreed with the court in *Hannah* that the nature of the claims and the relief sought must be examined when determining whether the probate court has jurisdiction of a non-probate claim. *Narvaez v. Powell*, [564 S.W.3d 49, 56](#) (Tex. App.—El Paso 2018, no pet). In *Narvaez*, a group of heirs filed suit in district court against attorneys alleging breach of fiduciary duties and legal malpractice. *Narvaez v. Powell*, [564 S.W.3d at 52](#). The court in *Narvaez* found that a legal malpractice claim cannot be characterized as a probate proceeding within the meaning of [Section 31.001](#) or related to a probate proceeding as that term is defined by [Section 31.002 of the Estates Code](#). *Narvaez v. Powell*, [564 S.W.3d at 57](#).”)

- X. [412249-404](#) – A statutory Bill of Review constituting a direct attack on the Probate Courts Order denying Candace Curtis Plea to the Jurisdiction.
- XI. 2020-09-10 SDTX No. 4:12-cv-592
  - a. [Rule 60 Motion, Hearing, Order](#) denying Motion to Vacate Remand
- XII. 5<sup>th</sup> Circuit ROA No. 20-20566
- XIII. [412249-405](#) – This case was created March 11, 2022 by an order severing Carl Brunsting from the 412249-401 lawsuit Carl Brunsting filed in the probate court April 9, 2013, [No. 412249-401], leaving Candace Curtis as the sole defendant with alleged Co-Trustee Defendants Amy Brunsting and Anita Brunsting and their attorneys Stephen Mendel and Neal Spielman as the only remaining Plaintiff's in the lawsuit Carl Brunsting filed the same day Candace Curtis was attending the preliminary injunction hearing in the Southern District of Texas.
- XIV. [Texas First District Court of Appeal No. 01-22-00378-CV](#) (Appeal Withdrawn) The clerk will not compile a record from more than one case number. This would explain why the attorneys create a mess with multiple case file numbers when there is only one family and one family trust at issue. Texas Rule of Appellate Procedure 26.1 requires that a Notice of Appeal be filed within 30 days of the date of entry of the order appealed. Texas Rule of Appellate Procedure 26.1(a)4 extends that period to 90 days when certain criteria have been met. The only exception to this constraint are judgments void for want of jurisdiction and those voidable for due process defects and other substantive procedural ground.
- XV. [Texas First District Court of Appeal No. 01-22-00513-cv](#) Petition for Writ of

Mandamus ([denied with no explanation](#)).

A December 5, 2021 Rule 11 Agreement; March 11, 2022 order severing the claims of diversity polluting “[involuntary Plaintiff](#)” Carl Brunsting from those of “Co-Plaintiff” Candace Curtis, [Carl Brunstings’ March 18, 2022 Nonsuit of Candace Curtis](#) and a [February 25, 2022 Order for Summary Judgement](#), changing Candace Curtis standing, uncover the veil of fraudulent joinder and provide the basis for invoking removal jurisdiction pursuant to 28 U.S.C. § 1441(a) and (b)(1).

There hasn’t even been an evidentiary hearing. Candace Curtis could never get an evidentiary hearing. Without a hearing there is no evidence and without evidence no judgment can be entered.

XVI. [SDTX No. 4:22-cv-1129](#) April 7, 2022 created by removal of the alleged Co-Trustees’ counterclaims to the Southern District of Texas.

The Brunsting trust controversy is not a probate matter, a probate case or a probate proceeding and there is no estate administration for all of these fraudulently manufactured cases to have been filed ancillary too. The good news is that Mendel and Spielman seized the opportunity to mislead the court by filing what they had never filed in any other court; their fee statements.

### **Mendel Fee Statement**

Stephen Mendel for Anita Brunsting: Mendel Law Firm Case 4:22-cv-1129 [Document 2-12](#) Filed on 04/08/22 in TXSD Page 10 of 56

*“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”*

Mendel deceived the SDTX by making it look as if Candace Curtis had sued her siblings in the probate court when it was Carl that sued his siblings in the probate court including Candace. Mendel also claims his fee statement does not include the Honest Services Fraud Case [RICO] but he has [15 pages of billing for a period of time when nothing occurred](#) in the probate court.

2016-07-05 Case 4-16-cv-01969 [Doc 1](#) Harris County RICO\_Complaint

2018-06-28 No. 17-20360 [United States Court of Appeals for the 5th Circuit](#)

### **Spielman Fee Statement**

Neal Spielman for Amy Brunsting: Case 4:22-cv-01129 [Document 2-15](#) Filed on 04/08/22 in TXSD Page 17 of 52

*5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with IME for Carl to assist in determination of whether guardian is needed for Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor*

*5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing*

- 2014-12-05 [Co-trustees opposition to Ostrom Motion for distribution](#)

Page 1:

*Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.*

*Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.*

### **Attorney Fee Demands**

Defendant Co-Trustees have never disclosed their contract with counsel showing that their personal attorneys represent them as Trustees or the conditions under which Anita has been shown to have paid Stephen Mendel nothing. If Anita's contract with Mendel states that his fees are to be paid from "the trust", Anita and Mendel violated the preliminary injunction in entering into such an agreement without approval from a Court of competent jurisdiction.

2022-04-08 [Spielman's fee entries](#) show Anita threatened Carl with a Guardianship action in order to coerce capitulation. This was the same [undue influence](#), Anita and Freed [used against Nelva](#) when [Nelva discovered Anita's treachery with Freed](#). If Anita truly believed that Carl needed protection, she would have filed rather than make threats to coerce capitulation.

Elmer Brunsting [[412248](#)] and Nelva Brunsting [[412249](#)] had pour-over-wills and a [living trust](#). Elmer's estate [inventory](#) does not contain any tangible property other than ½ of a 1970's used car and Nelva's estate [inventory](#) also contains ½ of a used car. Nothing else in either inventory provides a basis for probate jurisdiction.

### **First District Court of Appeal for the State of Texas Cause No. 01-23-00362-CV**

- XVII. [Harris County's First District Court of Appeal for the State of Texas Cause No. 01-23-00362-CV](#).
- a. [Clerks Record](#)
  - b. Reporters Record
    - i. Transcript [1](#) Carole Emergency Motion
    - ii. Transcript [2](#) Motion to Sever and Status Conference
    - iii. Transcript [3](#) Pretrial Conference Sanctions
  - c. [Appellants Opening Brief](#) on Appeal ([Appendix of Exhibits](#))
  - d. [Appellees Unopposed Request for Extension of Time](#) to File Answer
  - e. [Appellees opposed 2<sup>nd</sup> Request for Extension of Time](#) to File Answer
  - f. [Appellees Brief](#)

g. [Appellants Reply Brief](#)

**BACK END CHRONOLOGY 2012-2024**

SDTX Candace Curtis files Breach of fiduciary claims Dismissed under the probate Exception

5<sup>th</sup> Circuit Appeal No. 12-20164

**Harris County Probate Court No. 4**

Pour over wills filed Harris County Probate Court No. 4

Wills admitted and Letters for Independent Administration issued No. 412248, 412249

Sole devisee = Living Trust containing no assets belonging to a decedents estate

**Harris County District Court 180**

Bayless - Independent Executor files Petition to take depositions before suit in Harris County District Court 180

**Curtis v Brunsting 704 F.3d 406 (5<sup>th</sup> Cir. Jan 2013)**

2013-01-09 5<sup>th</sup> Circuit Reverse and Remand to SDTX for further proceedings.

**Harris County District Court 164**

2013-01-29 Bayless - Independent Executor files professional negligence claims against estate planners in Harris County District Court 164 Cause No. 2013-05455 (case is now in 2 courts)

Inventory Approved Probate Court 4

Probate No. 412248 & 412249 Dropped from Active Docket

**2013-04-09 Harris County Probate Court No. 4 – No. 412249-401**

Bayless –Independent Executor files Non-probate tort claims in the probate court relating only to the sole devisee trust (Case is now in 3 courts)

2014-05-09 SDTX – Ostrom, representing the federal plaintiff, Files unopposed Motion to Remand to Probate Court No. 4.

**Harris County Probate Court No. 4 – No. 412249-402**

2014-05-28 Case No. **412249 402** MOTION TO ENTER TRANSFER ORDER signed by Butts

2015-02-17 Bayless - Independent Executor files Resignation and substitute's wife Drina

2015-03-09 Agreed Order to Consolidate Estate of Nelva Brunsting 412249-401 with Estate of Nelva Brunsting 412249-402 (-402 is closed)

2015-03-30 Ostrom Termination

2015-06-01 Dockets 249 with -401 and -402 Combined [Consolidation Order is Gone](#)

This is docket tampering.

Tab 82a [2019-01-28 email Carol and Comstock](#) re Consolidation Never Happened

Tab 82b [2019 01 28 email re consolidation order](#) not in the docket

Tab 82c [2019-01-28 email](#) Bayless re Agreed Order to Consolidate Cases “was in the paper file, but had not been scanned”. It was scanned. I obtained a copy prior to firing Ostrom but did not get a certified copy, just one by mail [without the water mark](#). The question thus becomes: How did it get removed from the docket after we discharged Ostrom?

2015-06-26 Case 412249-401 [Anita & Amy's No Evidence MSJ re 8-25-2010 QBD](#)

2015-07-14 Bayless - Independent Executor's wife Drina files [Motion to Transfer District Court 164 Case to Probate](#) Court 4.

2019-03-01 District Court [Order Transferring District Court 164 case to Probate](#) pursuant to Probate Court 4 Order of February 14, 2019

2019-11-04 Amy and Anita Brunsting [Orig. Counterclaims](#) Probate No. 4

2021-11-05 [Defendant Co-Trustees Motion for Summary Judgment](#)

2021-12-05 Bayless/Mendel/Spielman [Rule 11 Agreement](#) not to proceed with any controversy against one another

2022-01-05 Carl/[Drina Brunstings Motion to Sever Carl from Candace](#) and create the 412249-405 file

2022-02-11 [Hearing on Severance Motion](#)

[2022-02-25 Order for Summary Judgment](#)

### **Harris County Probate Court No. 4 No. 412249-405**

Carl Brunsting Individually and as Independent Executor vs Anita Brunsting and Amy Brunsting

2022-03-14 [Order to Sever](#) Carl from Candace, leaving Candace in the -401 as a defendant to Anita and Amy's counter claims.



2022-03-14 [Order to Sever](#)

2022-04-07 [Notice of Removal](#)

## DAMAGES

Unfortunately injuries and damages suffered by the beneficiaries of this family trust, as a direct and proximate result of Anita's failure to act according to the Settlor's directives, have continued to grow unabated. Using a prudent investor calculation of 13.8% interest compounded annually [14], each beneficiary's 115th share of the three million dollar family trust should be worth more than 2.5 million dollars. None-the-less, the trust corpus has remained stagnant while it is being held hostage in effort to extort the cost of Anita's failed attempt to steal the family trust from the other beneficiaries, under terms and conditions that would launder the extorted ransom by a settlement contract labeling the extorted ransom money's as legal fees.

The Defendants December 5, 2014 Objection to Plaintiffs Motion for Distributions [ 412249w401] argues at page 1:

1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.
2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.

However, on March 5, 2021 Defendants submit an accounting in preparation for settlement negotiations in which they list \$537,000 as a "Legal Fee Allocation" [15] with each beneficiary bearing a share of those costs. These Legal Fee Allocations do not appear as outstanding obligations of the trust on any trust accountings and are either trust obligations the trustee failed to disclose and for which the trustee has failed to account or, they are an illicit attempt to extract valuable consideration from parties that do not owe any such thing. There has been no accounting for these fees at all. What are they for? There has been no disclosure of any retainer agreement between trustee and attorney that would explain the work to be performed or the purpose for the Beneficiaries having received no benefit from the family trust in the past ten years while several non-beneficiaries have enjoyed distributions from the family trust during that period:

\$5000.00 Attorney Jason Ostrom

\$5000.00 Attorney George Vie III

\$300,000.00+ in excess taxes due to trustee failure to distribute trust income to the beneficiaries.

\$6500.00 Andrews Kurth L.L.P. mediation

\$19,907.40 to attorney Gregory Lester, Temporary Administrator for the "Estate of Nelva Brunsting". How is the trust supposed to recover loans to an estate that does not have a representative or a corpus?

\$10,620.73 to Jill Willard-Young, attorney for attorney Gregory Lester, Temporary Administrator for the "Estate of Nelva Brunsting". How is the trust supposed to recover loans to an estate that does not have a representative or a corpus?

Mediation with Judge Seymour - unknown

Mediation with Judge Davidson - unknown

None of this accounts for money spent on costs or fees already paid to attorneys by the beneficiaries. In the face of all this the alleged trustee defendants are demanding \$537,000.00 in legal fee allocations without evidence of a retainer agreement describing the work to be performed or an accounting statement describing the work actually performed for which the beneficiaries of the trust would be liable. These figures also fail to include Anita's self-dealing, careless losses or non-disclosed and non-equalized distributions.

## **FRAUD CONSPIRACY**

Grift of the Brunsting's begins with an estate planning bait and switch that includes a trust indenture that is defective by design that is implemented by the generation of illicit instruments in the wake of each "Hurrah" or family crisis event.

## **FORGERY**

Instrument dated August 25, 2010

## **PERJURY**

SDTX 4:12-cv-592 Doc 10-1 claiming personal asset trusts had been set up for the beneficiary "as is the case for Candace"

## **MISAPPLICATION OF FIDUCIARY PROPERTY**

Texas Penal Code §§ 32.45, 32.53

## **OBSTRUCTION**

State Court actions filed with the intent to interfere with the jurisdiction of a federal court  
Can't buy an evidentiary hearing.

## **EXTORTION**

Amy and Anita's attorneys making disinheritance threats in effort to coerce a settlement agreement that would launder their extorted ransom as "fees for legal services"

## **VIOLATION OF A FEDERAL INJUNCTION**

Anita could not enter into a contract to pay Mendel from the trust without the approval of a court of competent jurisdiction.

### **DOCKET TAMPERING**

The Agreed order to consolidate cases was removed from the digital record.

### **All Ancillary Matters are Void for Want of Jurisdiction**

Carl's 412249-401 action is void as the independent executor was foreclosed from taking any further action in the probate court after the independent administration closed. This tort suit was instituted 4 days after the independent administration closed. The independent executor resigned in 2015 and there has been no successor appointed.

### **Consolidation Agreement Void as neither party was an active litigant in the probate court**

The 412249-402 action, allegedly Candace Curtis federal action, does not exist as a matter of law and the [agreed order to consolidate](#) the 412249-401 with no plaintiff with the 412249-402 with no lawsuit did not create statutory probate jurisdiction. Nothing plus nothing equals nothing. No one was representing the estate when this agreement was signed and the federal lawsuit was never filed in a state court.

### **Transfer Order Void**

The estate planning attorney are clearly liable and the insurance company attorneys are culpable as well.

Estate of Nelva Brunsting 412249-403 does not have a plaintiff as of February 2015 when Carl resigned. None-the-less the real party in interest is not a legal fiction called "estate" but the beneficiaries of the sole devisee trust. Candace Curtis is the de jure trustee for the trust.

The probate closed with the acceptance of the inventory and the drop order. The order transferring the case from the district court to probate is void as the "snatching statute" [[Tex.Est.Code § 34.001\(a\)](#)] makes it clear that there must be a pending probate administration for the probate court to exercise that authority.

*Sec. 34.001. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding **pending** in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.*

## Preliminary Injunction

The [preliminary injunction](#) issued in the Southern District of Texas remains in full force and effect and imposter co-trustees have nowhere to go for permission. This would be a good time to bring up what Judge Hoyt said at the hearing [[P.36](#)]

*15 Here's what I'm suggesting. I am suggesting  
16 that this will not become a feast and famine, feast for the  
17 lawyers and famine for the beneficiaries in this Court where  
18 we are sitting around churning the time out and the parties  
19 are charging out of that lawsuit, defense of that lawsuit,  
20 which you are not doing, apparently, unless -- are you the  
21 lawyer that created the trust?*

Up until now all of their “settlement” proposals had the participating attorneys stuffing their pockets from the trust and had it [in their minds](#) they were going to write themselves in as beneficiaries in perpetuity. Meanwhile, the estate planning Grifters attorneys were filling their pockets from the malpractice insurance money cow and allowing their clients victims to suffer the abuse doled out by the participant’s in the probate charade.

Thus, at this point we are seeing everyone on the other side looking around for a way to save themselves from their participation in a conspiracy involving Misapplication of Fiduciary Property in excess of \$300,000 [Tex. Penal Code §§ 32.45 & 32.53] held in trust for the benefit of elderly and disabled beneficiaries. These are felonies but not the only felonies.

Anita [Mendel] and Amy [Spielman] have clearly shown with their [summary judgment motion](#) that they caused litigation to be brought for the purpose of advancing a theory that, if true, would enlarge their share of the trust or originate an interest for their attorneys. This is the activity proscribed by the interorem clause [Article 11 Section C](#)

Re [tension between comity and federalism](#): We have a [conspiracy to interfere with the jurisdiction of a federal court](#).

Perjury by [false affidavit](#) 2012-03-06 Affidavit of Amy Brunsting SDTX Doc 10-1

Cases [related by operative facts and participants](#)

The [Participants](#) and the Objective