

INTRODUCTION

Grift of the Brunstings is a two-part story that includes a front end and a back end. The front end is an estate planning bait and switch that follows [a well beaten path](#) and the back end is an attorney exploitation of the front-end setup.

THE PLAN

Elmer and Nelva Brunsting had five adult children and having heard a great deal about [corruption in the Harris County Probate Court](#) they called an estate planning and asset protection firm who then created an estate plan that included pour-over wills and a living trust with assurances that his products and services would [avoid guardianship](#) for the parents and obviate any need for the children to suffer the expense and inconvenience of probate.

Elmer passed April 1, 2009 and Nelva passed November 11, 2011. A status conference in Carl Henry Brunsting, Independent Executor for the Estates of Elmer H. and Nelva E. Brunsting vs Vacek & Freed et al., [[Estate of Elmer & Nelva Brunsting No. 412249-403](#)] is to be held in person on Thursday, February 29, 2024, at 9:30 a.m. in Harris County Probate Court No. 4.

Today is Tuesday January 31, 2024. 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 Appeal on questions surrounding jurisdiction. The 1st District Court of Appeals has indicated they will decide the appeal on [February 13, 2024](#) without oral argument.

I. THE SOURCE 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. The acrimony thus created has since been exacerbated and exploited by [collusion among other attorneys](#) in pursuit of their own unjust self-enrichment.

II. WHAT IS A TRUST?

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.

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 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].

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 not protected by the trust relationship.

Enforceable duties (Active vs passive Trusts)

The second aspect of a valid trust is the Imposition of active and enforceable (fiduciary) duties on the holder of legal title (trustee). Precatory language is insufficient. The duties of the trustee must be affirmative and 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 controversy that has arisen among the successor beneficiaries of the Brunsting Family Living Trust.

III. THE BRUNSTING TRUST INSTRUMENT AND EVENT CHRONOLOGY

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

1996 Family Trust (P.8)

In 1996 Elmer Brunsting and his wife Nelva created the “Brunsting Family Living Trust” for their benefit and for the benefit of their five adult progeny. Elmer and Nelva were the original co-trustees and Anita Brunsting was named as the sole successor trustee. (Article IV)

1997 Irrevocable Life Insurance Trust

In 1999 Elmer and Nelva also created an irrevocable Life Insurance Trust for the benefit of their five issues, naming Anita Brunsting as the sole trustee.¹
[This trust has been settled]

1999 Family Trust 1st Amendment (P.66)

Elmer and Nelva Original Co-Trustees No change to Article IV Anita is
Successor Trustee

2001 Family Trust 2nd Amendment (P.68)

Elmer and Nelva Original Co-Trustees No change to Article IV Anita is
Successor Trustee

2005 Family Trust Restatement (P.75)

In 2005 Elmer and Nelva restated their trust, replacing the original 1996 trust agreement in its entirety. The 2005 Restatement **removed Anita** from

¹ Anita Brunsting used this instrument April 9, 2013, at the preliminary injunction hearing, mixed with portions of the family trust, in attempt to fool federal judge Kenneth Hoyt into thinking that she had always been the only trustee for the family trust. Judge Hoyt’s April 19, 2013 Memorandum of Preliminary Injunction [14] points out the pertinent anomalies with the instruments and lack of accounting and finds that Anita failed to act in accord with the trusts requirements.

becoming a successor trustee and replaced her with Carl and Amy as successor co-trustees with Candace Curtis as the alternate.² [Article IV]

2007 Amendment to the Family Trust Restatement (P.195)

In 2007 Elmer and Nelva jointly amended Article IV of the 2005 Restatement. With the 2007 Amendment [9], Elmer and Nelva replaced Amy with Candace, leaving Carl and Candace as successor co-trustees and naming Frost Bank as the alternate. **(Amy removed)**

The Power to Alter or Amend

Article III of the 2005 Restatement provides an “either/or” for making changes to the trust agreement. Either (1) the signature of both Settlers or (2) a court of competent jurisdiction, neither of which accompanied any instrument dated after June 9, 2008. It necessarily follows that the administration and disposition provisions for Elmer’ trust share could not be changed after June 9, 2008 and that the September 6, 2007 Amendment was the last family trust instrument signed by both Settlers.

“Our Right to Amend or Revoke This Trust”

Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect. Tile affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real

² Temporary Administrator Gregory Lester lied about this on his supplemental Report

property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.”

IV. The Family Trust became Irrevocable June 9, 2008

Elmer Brunsting was certified [Non Compos Mentis](#) by three doctors in June 2008 [10] and was no longer able to make legal or medical decisions, thus rendering the family trust irrevocable by its own terms,³ and requiring the approval of a court of competent jurisdiction before any alterations or amendments could be made that would affect the distribution of Elmer or Nelva's share, see Texas Property Code Section §112.051.⁴

Qualified Beneficiary Designation

³ Texas Property Code Sec. 112.051. REVOCATION, MODIFICATION, OR AMENDMENT BY SETTLOR. (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

⁴ Elmer Brunstings irrevocable trust share contains all of the remaining assets

Article III of the 2005 Restatement also contains a provision that allowed each settlor the option of altering the disposition for their individual share. The exercise of this power could only apply to the share of the Settlor who exercised the power. Even then the Article III conditions requiring the signature of both Settlers or a court of competent jurisdiction to avoid merger. [[Tex. Prop. Code 112.034](#)]

Elmer did not exercise the QBD power and Nelva signature alone was incapable of making changes thus, the provisions for administration and disposition of Nelva and Elmer Brunsting's irrevocable trust "shares" remains those contained in the 2005 Restatement as amended in 2007. Carl Henry Brunsting and Candace Louise Curtis are the lawful co-trustees and Nelva and Elmer's share of the family trust were to be terminated, divided by five and distributed to the beneficiaries. That has not happened.

V. The Rupture

Notwithstanding the fact that the trust had become irrevocable, estate planning attorney Candace Kunz-Freed, with the assistance of Vacek associate attorney Bernard Lisle Mathews III, began producing alterations to Elmer and Nelva's trust agreement, beginning with drafting instruments altering Article IV, installing their new client Anita Brunsting⁵, as successor co-trustee with Carl and issuing new certificates of trust.⁶ None of the instruments authored after June 9,

⁵ Violating Rule 1.06(a), (d) and (e) of the Disciplinary Rules of Professional Conduct

⁶ CONFLICT: It should be noted here that when litigation was brought in effort to obtain an accounting and fiduciary disclosures, Anita Brunsting, and her new co-trustee Amy Brunsting, were represented by Vacek & Freed Attorneys Candace Kunz-Freed and Bernard Lisle Mathews III, infra. These conflicts of interest are violations of Rule 1.06(a), (d), (e) and (f)

2008 were signed by both Settlor's or approved by a court of competent jurisdiction and none could affect the trustee designations in Article IV or the disposition provisions expressed in Article X Section B; 1/5, 1/5, 1/5, 1/5, 1/5.

July 1, 2008 Appointment and Certificates of Trust

These instruments and the series to follow, are alleged to have been signed by Nelva alone and even if they were signed by Nelva, they were not approved by a court of competent jurisdiction and could not apply to the disposition of Elmer Brunsting's irrevocable trust share in any event. Nelva's was entitled to the income from Elmer's trust share but had a yearly limit of \$5000 on access to the corpus. (Article IX Section A (2)) with specific exceptions strictly limited to the Surviving founders "*health, education, maintenance and support*".

Elmer passed April 1, 2009

When Elmer passed on April 1, 2009 the successor co-trustees for the irrevocable Family and Decedent's trusts could only be those named in the 2007 Amendment [9]; Carl Brunsting and Candace Curtis.

An identical certificate to one not signed on July 1, 2008 appears to have been signed by Nelva alone on February 24, 2010 and thus, the steady encroachment continued as the Vacek & Freed Attorneys improper changes to Elmer and Nelva Brunsting's trust agreement are implemented one incremental alteration at a time, with Vacek & Freed's new client, "Anita Brunsting", now improperly embedded as a successor co-trustee with Carl.

of the Disciplinary Rules of Professional Conduct and is thus conduct ultra vires the office of attorney.

Freed and Mathews second wave of incremental alterations came with the Certificates of Trust dated February 24, 2010.

- a. New Family Trust [BRUNSTING005810-5813]
- b. Elmer H. Brunsting Decedents Trust (disposition of this share was irrevocable as of June 9, 2008)
- c. Nelva E Brunsting Survivors Trust (disposition of this share was amendable)

June 15, 2010 QBD

On June 15, 2010 [12], Nelva executed a Qualified Beneficiary Designation (Art III) combined with a Testamentary Power of Appointment (Art IX) in which she advanced Candace Curtis \$20,000 to be offset against her future inheritance.

July 3, 2010 Carl falls ill with encephalitis and is in coma

When Carl fell weak the Vacek & Freed team went to work exploiting this family crisis as an opportunity to continue their alterations of Elmer and Nelva's trust agreement. When Carl was is in a coma, Anita took that opportunity to launch a character attack on Carl's wife Drina, thus distracting attention from the changes Anita and the Vacek crew were making to remove Carl as a successor co-trustee. Freed's notes say "Anita called, Carl has encephalitis, amendment to trust, Anita and Amy to be co-trustees". - [7] -. This is clearly where we see the collusion between Anita, the Settlor's disloyal estate planning attorneys, and the irrevocable trust rupturing instruments that followed Elmer's incapacity.

VI. OBJECTION TO ASSUMING FACTS

August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment

After a number of disclosures the alleged August 25, 2010 QBD/TPA shows up in the record with three distinctly different signature page variations.

1. August 25, 2010 QBD/TPA Can before signature
 - a. Disclosed in Anita's 156 page objections filed December 5, 2014. The QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing Bates stamp [P229].
2. August 25, 2010 QBD/TPA Signature on the line
 - a. Case 4:12-cv-00592 Document 1-12 (pgs. 1-30) and Doc. 1-13 (pgs. 1-7), Filed TXSD on 02/27/12 with signature at Doc. 1-13 Page 7 of 20
3. August 25, 2010 QBD/TPA [V&F 353-389 ABL] Signature above the line
 - a. In Carole's 133 page objection filed Feb. 17, 2015. The QBD appears at pdf pages 97 through 133 with signature page 37 appearing at p133 and bearing Bates stamp [P192].
4. August 25, 2010 Appointment of Successor Trustees
5. August 25, 2010 Certificates of Trust [V&F 000207-251]

At page 3 of 13, in their June 26, 2015 "No-Evidence Motion for Summary Judgement", alleged co-trustees Anita and Amy Brunsting argue that Plaintiff can produce no evidence "*that Anita and/or Amy were present when Nelva signed the 8/25/2010 QBD*", and the first paragraph of the following page reads:

"There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting were present when Nelva allegedly executed the 8/25/10 QBD. There is no evidence that Defendant Carole Brunsting was present when Nelva executed the 8/25/10 QBD."

Thus, neither Anita, nor Amy, nor Carole claim to have been present when Nelva is alleged to have signed the instrument and yet each produced a different signature page version of the instrument. The Notary Public on all of the post June 2008 "change instruments" was estate planning attorney Candice Kunz-Freed, whose notes show that she received her instructions to "change the trust" from Anita [13] and we do have evidence of that. It should also be noted that Kunz-Freed's notary log fails to show that three separate copies of the 8/25/2010 QBD were notarized as required by Gov't Code § 406.014, if in fact three separate instruments had been signed on that date. As already stated, Texas Property Code

Section §112.051 does not allow a Settlor to amend a trust that has become irrevocable by its own terms so this 8/25/2010 QBD is necessarily invalid as to Elmer's share whether the instrument was signed by Nelva or not.

The August 25, 2010 QBD/TPA that Defendants point to as "the trust", is not in evidence. Until it has been introduced by eye witness testimony at an evidentiary hearing and qualified as evidence, beneficiary Candace Curtis objects to any reference to this instrument as assuming facts not in evidence. The same objection is hereby made to the instruments dated December 21, 2010. Instruments from both dates appear to be scanned analog instruments bearing the signature of estate planning attorney/notary Candace Kunz-Freed, to which digital images of Nelva's signature were added.

- a. December 21, 2010 Resignation of Original Trustee [V&F906-915]
- b. December 21, 2010 Appointment of Successor trustee [V&F240-245 & 906-915]
- c. December 21, 2010 Certificates of Trust, [V&F906-915]

These instruments appear to have been digitally altered to give the appearance of having been signed by Nelva Brunsting and, as the best evidence rule requires, we need to see a show of proof along with witness testimony regarding the chain of custody and control for each of these instruments. In any event the answers will have no effect on the disposition of the Elmer H. Brunsting's irrevocable trust share, officially created by the passing of Elmer Brunsting April 01, 2009.

November 11, 2011 Nelva Brunsting Demise

After Nelva's passing, the procedural catalyst for commencing litigation was Anita Brunsting's failure to provide a full, true and complete accounting within 90 days of a request by current trust income beneficiary Candace Curtis.

CASES RELATED BY OPERATIVE FACTS AND PARTICIPANTS

Backend Exploitation Chronology

VII. [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 Pro se on 2/27/2012.

VIII. [5th Circuit ROA.12-20164](#) (pro se appeal)

IX. [Harris County District Court 180](#)

2012-03-09 Petition to take depositions before suit **Harris County 80th Judicial District Court Cause No. 2012-14538** [Attorney Bayless]

5th Cir Jan 9, 2013 – [Curtis v Brunsting 704 F.3d 406](#) Reverse and Remand to SDTX for further Proceedings

X. [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.

XI. [Harris County Probate Court No. 4 Cause No. 412249-401](#)

A civil tort action exclusively related to the Brunsting trust filed on April 9, 2013 (the same day a [Preliminary injunction hearing is held in SDTX No. 4:12-cv-592](#)). Thus the question arises: What valid reason did [Attorney Bayless] have for filing two halves of the same integrally related case in two different courts? The cases not only share a common nucleus of operative facts, the first case; professional negligence against the estate planning attorney’s, was causative of the second and all of the injuries suffered flow from that source only to be enhanced by the actions of other attorneys.

The Federal Pro Se Plaintiff Retained Assistance of Counsel

Appellant Candace Louise Curtis, a California resident, had been pro se but at the end of 2013 she retained Houston attorney Jason Bradley Ostrom (Ostrom) who filed his appearance January 6, 2014.

Rather than litigate his client’s claims in his client’s choice of forum, Ostrom presented the federal court with a bundle of unopposed motions to Amend Curtis Complaint to add Attorney Bayless client Carl Brunsting, as an involuntary Plaintiff to pollute diversity, with an unopposed motion to remand the case to Harris County Probate Court No. 4, a court from which it had not been removed. [ROA 276-287]. The Southern District Court approved the bundle of unopposed motions on May 15, 2014.

XII. [Harris County Probate Court No. 4 Cause No. 412249-402](#) [Doc 79]

The federal case SDTX No. 4:12-cv-592 was remanded to Harris County Probate Court No. 4 May 14, 2014, approved as a transfer in June 2014. Ancillary cause “Estate of Nelva Brunsting No. 412249-402 (allegedly the federal case) was created February 9, 2015. (Maybe someone can explain the gaps in this sequence?)

- June 3, 2014 Order accepting transfer of the federal case signed [[ROA 274, & 302](#)]
- February 3, 2015 [Carl was deposed by Vacek & Freed](#) in the District Court CAUSE NO. 2013-05455 164th Judicial District Court. (Audio & Video)

JOB NO. 177755 US LEGAL SUPPORT 713-653-7100 Carl Testified that he had already paid attorney Bayless \$225,000.00

- February 9, 2015 “[estate of Nelva Brunsting No. 412249-402](#)” was opened [ROA 29 para 2]
- February 12, 2015 Carl is alleged to have given Drina POA (Not in probate records but in Mendel’s proposed “settlement agreement” vicariously obtained by me in July 2023)
- February 17, 2015 [Carl resigns and files substitution](#) of Drina as attorney in fact [ROA 25-26]
- February 20, 2015 An [Agreed Docket Control Order](#) was signed [ROA 27-28]
- March 9, 2015 an “[agreed order to consolidate](#) “estate of Nelva Brunsting No. 412249-402” with “estate of Nelva Brunsting No. 412249-401” was signed, closing the -402 file. [ROA 289]

Remand order” was accepted in Probate Court No. 4 as a transfer order

Federal case fraudulently 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 March 9, 2015.

XIII. 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. The point of this exercise was to force the participants to assume a position they would later have to defend. They all pled [Probate Case, Probate Matter and Probate Proceeding](#), including the probate judges. This is of relevant interest because the 1st District Court of Appeals in Houston has indicated they will decide the appeal on [February 13, 2024](#) without oral argument.

XIV. 5th Circuit ROA.17-20360

Affirmed for lack of a sufficient statement of supporting facts June 28, 2018.

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.

XV. [Harris County Probate Court No. 4 Cause No. 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.

XVI. [Harris County Probate Court No. 4 Cause No. 412249-404](#)

– A statutory Bill of Review constituting a direct attack on the Probate Courts Order denying Candace Curtis Plea to the Jurisdiction BUT MADE INTO A SEPARATE CASE BY THE CLERK.

XVII. [Harris County Probate Court No. 4 Cause No. 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 as the preliminary injunction hearing in the Southern District of Texas.

XVIII. [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.

XIX. [Texas First District Court of Appeal No. 01-22-00513-cv](#)

2022-07-10 [Petition for Writ of Mandamus \(denied with no explanation\)](#)

December 5, 2021 [Rule 11 Agreement](#) among the attorneys for the Original Plaintiff and original Defendants agreeing not to prosecute the Defendants alleged counter claims against Carl.

March 11, 2022 [order severing the claims](#) of Carl Brunsting from those of Candace Curtis as if there had been a consolidation of cases in the probate court when infact there were no cases properly filed in the probate court.

[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. Oh, but let us not let law get in the way when stealing money is the only real issue.

XX. [SDTX No. 4:22-cv-1129](#)

- I. April 7, 2022 created by removal of the alleged Co-Trustees' counterclaims to the Southern District of Texas.
 - a. Rosenthal remanded saying [Curtis sued her siblings in the probate court](#) as a result of [Mendel lying to Judge Rosenthal](#) to give the appearance of a vexatious litigant. On page 1 Medel lies about who filed suit in the probate court in the 412,249-401. Curtis did not sue her siblings in the probate court. [Curtis sued Anita and Amy in the Southern District of Texas](#). More than a year before Carl's 412,249-401 action was filed in the probate court.

XXI. Court Of Appeals for the First District of Texas Houston [No. 01-23-00362-CV](#)

Appellants Brief

<http://www.probatemafia.com/Brunsting/2023-06-30%20Appellants%20Brief%20No.%2001-23-00362-CV.pdf>

Motion to Extend Appellee Deadline

<http://www.probatemafia.com/Brunsting/2023-07-27%20Extend%20Appellee%20Brf%20Deadline.pdf>

Appellees brief

[http://www.probatemafia.com/Brunsting/2023-10-02%20Appellees'%20Brief%20\(Final-v2\).pdf](http://www.probatemafia.com/Brunsting/2023-10-02%20Appellees'%20Brief%20(Final-v2).pdf)

Reply to Appellees answer

<http://www.probatemafia.com/Brunsting/2023-11-01%20Reply%20to%20Appellee%20Answer%20001-23-00362-cv.pdf>

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.

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's in rem jurisdiction.

THE PARTICIPANTS

I. Attorney Albert Vacek Jr

II. Attorney Candace Kunz-Freed, Texas State Bar No. 24041282

(Vacek & Freed P.L.L.C.) Estate planning attorney's Candace Kunz-Freed and Bernard Lyle Matthews III are the disloyal estate planning attorneys. Candace Kunz-Freed (Freed) worked very closely with Anita Brunsting [using each family crisis event to implement changes](#) not authorized by the trust instrument after the trust had already become irrevocable by its own terms ([Article III](#)). Disciplinary Rules 1.06(a), (b)(2), (d), (e), (f) and comments 1, 2, 3, 4, 6, & 9

The most important thing Attorney Candace Freed said at her deposition is that [she couldn't pass the board certification exam if she tried](#) [P.141] and yet, she still advertises “estate planning services” and “The Pursuit of Excellence”.
(<http://www.freedlawyer.com>)

III. Attorney Bernard Lyle Matthews III, Texas State Bar No. 13187450

When trust beneficiary and de jure trustee Candace Curtis filed breach of fiduciary claims in the [SDTX](#) Bernard Lyle Matthews III (Mathews) appeared on behalf of their new clients arguing the case fell within the probate exception. Mathews appeared using a Green and Mathew's law firm label to conceal his conflict of interests. Disciplinary Rule 1.06 et seq.

IV. Attorney Bobbie G. Bayless, Texas State Bar No. 01940600

Attorney Bobbie G. Bayless (Bayless) representing Carl Brunsting (or his wife Drina) was the attorney that engaged in state court activities while Candace Curtis federal appeal was pending. That series begins with a petition to take depositions before suit, Harris County 80th Judicial District Court No. 2012-14538. After the 5th Circuit reversed and remanded for further proceedings (Curtis v Brunsting 704 F.3d 406) and while the federal case was in transition between courts, Bayless filed malpractice claims against the estate planning law firm in Harris County 164th Judicial District Court No.2013-05455. The Vacek & Freed Defendants are represented by Thompson Coe attorneys Attorney Zandra E. Foley, State Bar No. 24032085 and Cory S Reed, Texas State Bar No. 24076640. Affiant will address their undisclosed conflict of interest in due course.

Upon return to the Southern District of Texas Candace Curtis obtained a preliminary injunction and, on that same day, Bayless filed non-probate related tort claims [[Tab 25](#)] in the probate court, (No. 412249-401) as ancillary to a closed

estate, in an independent administration of a pour-over estate, after the inventory had been approved and the estate administration closed, in violation of Disciplinary Rules 3.01, 3.02, 3.03.

In short Bayless intentionally segregated the estate planning bait and switch grifters from their victims; the intended beneficiaries of the settlor's estate planning law firms' products and services.

With the estate planning attorneys sequestered in the district court and the trust held hostage in the probate court Bayless resigns her incapacitated independent executor [[Tab 27](#)] and began signing agreements [[Tab 28](#) & [29](#)] with the other participating attorneys.

HANNAH v. HATCHER

Bayless filed Carl Brunstings non-probate tort suit in Harris County Probate Court April 9, 2013. Bayless filed Hannah v Hatcher in August 2013. Bayless wrote a [plea to the jurisdiction](#) and [petition for writ of mandamus](#) No. 14-14-00126-CV, In Re Julie Hannah, effectively arguing that the tort claims she filed in the district court were not probate claims. [see *In re Hannah* , [431 S.W.3d 801](#)] The ringer is [Mortensen v Villegas](#) 630 S.W.3d 355! Mortensen is a judicial analysis of In re Hannah *In re Hannah*, [431 S.W.3d 801, 807-08](#) (Tex. App.—Houston [14th Dist.] 2014. In essence, [Bayless petition](#) and the opinion of the Court of appeal both show that Bayless knew Carl's probate court claims were not probate realted claims and that the Statutory Probate Court had no subject matter jurisdiction.

At a deposition July 3, 2015, [[Tab 74](#), [p.77](#) In 16-25] Carl testified that he had already paid attorney Bayless a quarter of a million dollars. That was more than eight years ago and none of Carl's claims have been resolved.

V. Attorney Darlene Payne-Smith, Texas State Bar No. 18643525

VI. Attorney Jason B. Ostrom Texas State Bar No. 24027710, Fed. Id. No. 33680

There is no rule this attorney did not break. His conduct in this case was absolutely reprehensible but the late Jason Bradley Ostrom (Ostrom) is no longer of concern to the Bar and no longer a threat to public justice. It should be noted that Ostrom appeared as a pro se defendant in the honest services fraud case (SDTX 4:16-cv-1969) and also represented co-defendant Attorney Gregory Lester, Texas State Bar No. 12235700, against the client he betrayed. **Can you say Conflict of Interest?**

Attorney Gregory Lester, Texas State Bar No. 12235700 was appointed Temporary Administrator for the sole purpose of evaluating the pending “claims” (Tex. Est. Code § 22.005). **We will get to the fraudulent temporary administrator and his report in due course** but Ostrom representing RICO co-conspirator, co-defendant, Gregory Lester against his former client was a violation of Disciplinary Rule 1.06 et seq. Ostrom also lied to the federal tribunal, claiming the honest services fraud case arose from a “probate case” [SDTX NO. 4:16-cd-1969 Doc 78 p.1] (Disciplinary Rule 3.03 et seq.)

*“It is settled law that a trustee is not entitled to expenses related to litigation resulting from the fault of the trustee. See **duPont v. S. Nat'l Bank** , [575 F.Supp. 849, 864](#) (S.D. Tex. 1983), modified, [771 F.2d 874](#) (5th Cir. 1985). ” *Goughnour v. Patterson*, No. 12-17-00234-CV, at *25-26 (Tex. App. Mar. 5, 2019)*

Nelva passed 11/11/2011. Anita was unable to produce a competent accounting and had already made her plans to steal the family trust well known. Candace filed a breach of fiduciary suit 109 days after Nelva passed (2/27/2012). The case was dismissed under the probate exception then reversed by the 5th

Circuit [Tab 2]. Upon returning to the Southern District of Texas with no accounting having been produced, Candace applied for a preliminary injunction.

Anita claims to have become sole trustee on 12/21/2010. The injunction hearing was had April 9 2013.

Breach of fiduciary has three elements.

1. The existence of a fiduciary relationship.
2. The fiduciary's failure to perform the obligations owed to the beneficiary
3. Benefit to the fiduciary (trustee) or injury to the beneficiary as a result of the trustees failure to perform.

The memorandum of preliminary injunction [Tab 4] established the existence of a fiduciary relationship (1). Anita Brunsting and Amy Brunsting owe fiduciary obligations to Candace Curtis. (2) that Anita's had failed to perform the obligations required by the trust - based upon the instruments Anita submitted to the Court; that Anita had failed to establish books and records of accounts after more than two years as trustee and failed to disclose unprotected trust instruments. (3) A May 9, 2013 Order appointing a Special Master [Tab 5] verified how Anita caused the litigation to be brought by her failure to account and the Report of the Special Master [Tab 6] filed August 8, 2013 revealed self-dealing and other undisclosed transactions Anita had performed that benefitted only her or her, Amy and Carole. One example is \$40,000 in personal credit card debt paid directly out of a trust checking account. Anita labeled that as "trustee compensation" but failed to perform her trustee duties and made no record of any fiduciary acts that would justify "compensation".

On January 6, 2014 Houston attorney Jason Bradley Ostrom (Ostrom) filed Notice of Appearance in the SDTX as counsel of record for Candace Curtis [Tab 8]. At this juncture an accounting had been produced and all that was necessary was for previous distributions to be equalized among the beneficiary's and the remaining assets divided by 5. However, there is no indication that Anita had any intentions of performing those obligations but fully intended on causing litigation to be brought so she could play the In Terrorem card, as was stated in Curtis original complaint [Tab 1]. That complaint also mentioned hearsay of Anita wiretapping Nelva's phone and stalking her emails. All of this gets verified in due course.

Rather than resolve the fiduciary issue and settle the trust, Ostrom perpetrated fraud in order to obtain an order for Remand.

May 9, 2014 Ostrom filed a 1st amended complaint to pollute diversity [Tab 9], and on May 9, 2014 Ostrom filed an unopposed Motion to “**Remand**” the non-probate case to Harris County Probate Court No. 4 [Tab 10], from which the case had never been removed. Ostrom never even filed notice of appearance in the state probate court but simply started filing documents and signing agreements. May 28, 2014 Ostrom filed a Motion to Enter a Transfer Order. The order approving the federal remand as a transfer was entered June 5, 2014 [Tab 26] February 9, 2015 Estate of Nelva Brunsting No. 412249-402 was opened, and was allegedly the federal case remanded/transferred to the probate court.

February 17, 2015, incapacitated independent executor Carl Henry Brunsting tendered his resignation and substituted his wife Drina as his attorney in fact. [Tab 27]. Three days later, February 20, 2015, Ostrom and the participating attorneys all signed an Agreed Docket Control Order [Tab 28] and March 5, 2015

the participating attorneys all signed an Agreed Order to Consolidate “estate of Nelva Brunsting 412,249-402” with “estate of Nelva Brunsting 412,249-401” [Tab 29].

The question at this juncture is where is the federal plaintiff’s lawsuit?

The probate court docket [ROA.20-20566.2869] shows that Ostrom did not even bother to file an appearance in Harris County Probate Court No. 4, but simply filed a motion to enter a transfer order [ROA.20-20566.2684-2690] and then entered into agreements culminating in a merger so complete [ROA.20-20566.2693-2696] that it deprived Appellant of her separate legal identity and substantial rights. In this manner Appellant’s own counsel, in concert with other attorney’s, robbed Candace Curtis of her right to due process, her right to equal protection of the law, her legal work product and access to the benefit of the unanimous opinion of the 5th circuit court in the very cause in which it was obtained. (Curtis v Brunsting 704 F.3d 406)

VII. Attorney Stephen A Mendel, Texas State Bar No. 13930650

Defendant’s Anita Brunsting and Amy Brunsting appeared in SDTX No. 4:12-cv-592 represent by their parent’s disloyal estate planning attorneys (Bernard Lyle Matthews III) but changed to attorneys from Thompson Coe for the Fifth Circuit appeal [No. 12-20164]. George Vie III appeared in the federal court and Maurene McCutcheon appeared in the state probate court. Affiant has no complaints regarding the conduct of the Mills Shirley Attorneys.

After the fraudulent “REMAND” to the state probate court and a pointless mediation, Mills Shirley Attorney Maurene McCutcheon, unwilling to descent to the level of moral depravity required by her client’s intentions, filed a motion for leave to withdraw citing conflicts between the law firm and their clients.

Stephen A Mendel made his appearance November 14, 2015 and page one of the very first pleading Mendel filed [Tab 54] December 5, 2015 makes four claims:

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.

3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.

4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust.

There it is, Number 4, the intimidation artifice. Don't forget sanctions and the vexatious litigant label.

February 17, 2015, incapacitated independent executor Carl Henry Brunsting tendered his resignation and substituted his wife Drina as his attorney in fact [Tab 27]. The very next day, February 20, 2015, Mendel Law firm attorney Brad Featherston and the participating attorneys all signed an Agreed Docket Control Order [Tab 28] and March 5, 2015 the participating attorneys all signed an Agreed Order to Consolidate “estate of Nelva Brunsting 412,249-402” with “estate of Nelva Brunsting 412,249-401” [Tab 29], and closing the -402 docket, effectively converting the federal plaintiff into a state court co-plaintiff/defendant in Carl's (Bayless) probate case.

Curtis fired Ostrom immediately upon discovering his treachery and the Agreed Order to Consolidate [Tab 29] quickly disappeared from the docket record.

After illegal WIRE TAP recordings⁷⁸ were disseminated by the Mendel law firm via certified mail in July 2015, the “Agreed Docket Control Order” [Tab 28] and dispositive motions hearings were displaced by Bayless Emergency Motion for a Protective Order [Tab 72]. See transcript [Tab 63]. We didn’t see another Docket control Order until June 2021 [Tab 75]. Let’s see where we are in the [war of attrition](#), nothing resolved to date and everything is still pending. Judge Christine Butts never ruled on a single dispositive or declaratory issue.

In the Honest Services Fraud case [[SDTX 4:16-cv-1969](#)] Mendel claimed the allegations stemmed from a probate case ([Steven Mendel Doc 36](#) p2, 6) and used the words “probate court” redundantly. Mendel was also accused of extortion and obstruction of justice. The proof of extortion comes in the form of a “pre-settlement accounting” [Tab 57] where the attorneys were demanding their fees be paid “off the top”, a/k/a from the trust. So much for [Mendel’s December 5, 2014 pleading](#) that:

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.

⁷ [Wire Tap Recordings](#)

⁸ [Wire Tap Recording2](#)

Mendel engaged in nothing but obstruction and evasion while making verbal threats of disinheritance in effort to force beneficiary Candace Curtis to capitulate to his ransom demands. He did not put his larceny on paper until his March 5, 2021 “settlement proposal” [Tab 57], where he completely ignored his December 5, 2015 arguments against distributing anything to the beneficiary. [Tab 54]

Tex. Prop. Code

Sec. 101.002. LIABILITY OF TRUST PROPERTY.

Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Mr. Mendel and his client have been in perpetual violation of the federal preliminary injunctions [Tab 4] command to deposit income into an appropriate account for the beneficiary. Instead, Mendel has allowed his client to pay excess taxes directly resulting from the trustees’ refusal to distribute anything to the beneficiary. (see reference to “incurred debt” ROA.20-20566.2886) [Tab 100] The

exercise of a cestui que right to hold the trustee accountable cannot be diminished, let alone perverted into violation of an in Terrorem clause. Disciplinary Rule 3.01.

Tex. Prop. Code Sec. 112.032. ACTIVE AND PASSIVE TRUSTS; STATUTE OF USES. (a)

Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

(b) The title of a trustee in real property is not divested if the trustee's title is not merely nominal but is subject to a power or duty in relation to the property.

Mendel showed his true colors when he filed a ranting Motion for Summary Judgement claiming Curtis violated a no-contest clause by refusing to capitulate to their ransom demands [Tab 76]. Mendel's fee statement [Tab 51] does not show Anita Brunsting having ever paid Mendel a dime. See Disciplinary Rule 1.08 (e)(h) & Note 7. Mendel by advancing credit for his services and demanding his fees be paid from the trust, has attempted to acquire an interest in the trust thereby acquiring a proprietary interest in the subject matter of the litigation in which he has endlessly sought to maximize his own return (champerty and maintenance) rather than representing the interests of his client and performing as an officer of the legal system and guardian of the law, Mendel has acted in the capacity of a self-interested predator. See Disciplinary Rules 3.02, 3.03, 3.04 & 3.05. See Preamble A para 1, 2, 3, 4, 5, 7, & 8.

VIII. Attorney Neal Spielman, Texas State Bar No. 00794678

Attorney Neal Spielman made his appearance on behalf of Co-Trustee Defendant Amy Brunsting shortly after the Mendel law firm made their appearance.

IX. Attorney Gregory Lester Texas State Bar No. 12235700

[[Tab 60](#)] After the wiretap recordings were used to eliminate the February 20, 2015 DCO and evade dispositive motions hearings, Attorney Gregory Lester was appointed Temporary Administrator for the “*estate of Nelva Brunsting*” for purposes of evaluating the “claims” in the case.

Tex. Est. Code § 52.002 CLAIM DOCKET

(a) The county clerk shall maintain a record book titled "Claim Docket" and shall record in the book each claim that is presented against an estate for the court's approval.

The Report of Temporary Administrator Gregory Lester [[Tab 59](#)] never mentions the will of Nelva Brunsting, fails to identify any property subject to in rem claims and never mentions a single claim against the “*estate of Nelva Brunsting*”.

Instead, Temporary Administrator Gregory Lester’s Report runs straight to the In Terrorem clause in an instrument referred to as a “Qualified Beneficiary Designation and Testamentary Power of Appointment under living Trust Agreement” containing a no contest clause that includes corruption of blood. This instrument is not in evidence and the defendant alleged co-trustees will not produce the instrument and qualify it as evidence because they cannot. See [[Tab 77a](#)]

“An honest temporary administrator’s report [ROA.17-20360.611] would have pointed these things out instead of attempting to validate the forgery called 8/25/2010 QBD.²⁴ Defendants cling to this instrument in their assertions of fact, but refuse to produce it and qualify it as evidence. They will not because they cannot.”

Gregory Lester's bill for services [[Tab 78](#)] shows that he spent the lion's share of his time with Attorney Neal Spielman and his statement does not match [Jill Young's statement](#) for the periods each billed for meeting with the other. Fraudulent Administrator Gregory Lester (administrator of nothing) also filed a supplement to his report that is patently false [[Tab 77](#)].

X. Attorney Jill Willard-Young Texas State Bar No. 00797670

Participant in the Temporary Administrator scam with Gregory Lester and walked away with Brunsting Trust money in her pocket.

Milking the Malpractice Insurance Money Cow

Representing the Associate Judge in the probate court while also representing the estate planning bait and switch grifters in the District Court. **Can you say conflict of interest?**

XI. Attorney Zandra E. Foley, State Bar No. 24032085

Thompson/Coe attorney representing estate planning bait and switch Grifter Candace Kunz-Freed in [Harris County District Court 164 Cause No. 2013-05455](#) brought by Bayless on behalf of the estates of Elmer and Nelva Brunsting. This case was abandoned by Bayless when she filed Carl's resignation.

Attorney Zandra Foley was simultaneously [representing Clarinda Comstock](#), associate Judge for Harris County Probate Court No. 4, as a co-defendant in Willie Jo Mills. See SHERRY LYNN JOHNSON vs. DAVID DEXEL, ET AL [SDTX Case 4:16-cv-03215](#)

Milking the Malpractice Insurance Money Cow

Representing the Associate Judge in the probate court while also representing the estate planning bait and switch grifters in the District Court. **Can you say conflict of interest?**

XII. Attorney Cory S Reed, Texas Bar No. 24076640

Thompson/Coe attorney representing estate planning bait and switch Grifter Candace Kunz-Freed in Harris County District Court 164 Cause No. 2013-05455 brought by Bayless on behalf of the estates of Elmer and Nelva Brunsting. This case was abandoned by Bayless when she filed Carl's resignation.

Attorney Cory S Reed was simultaneously [representing Clarinda Comstock](#), associate Judge for Harris County Probate Court No. 4, as a co-defendant in SHERRY LYNN JOHNSON vs. DAVID DEXEL, ET AL [SDTX Case 4:16-cv-03215](#).

XIII. County Employee/Appointee (Associate Judge) Clarinda Comstock

Clarinda Comstock was a Defendant in a wrongful death action involving Willie Jo Mills. See SHERRY LYNN JOHNSON vs. DAVID DEXEL, ET AL SDTX Case 4:16-cv-03215

County Employee/Appointee (Associate Judge) Clarinda Comstock was represented in that case by the same law firm and attorneys that are representing the Vacek & Freed estate planning attorneys in the case transferred to the probate court from the District Court with no pending estate administration and where the case has remained before Comstock without a plaintiff since Carl Brunsting resigned the office of independent executor February 19, 2015. Clarinda Comstock has never had the integrity to declare her conflicts of interest in the case.

XIV. Harris County Texas

Providing the promiscuous forum, along with county clerks and other county employees and appointees.

XV. Attorney Tamorah Christine Butts Texas State Bar No. 24004222

(JUDGE - elected public officer)

XVI. Attorney James Horwitz (JUDGE - elected public officer)

Our hats are off to the Honorable James Horwitz. His honor was handed a real can of worms but was actually able to figure out a way to get it resolved without biting the hand that feeds him (Harris County).

XVII. Attorney and former Texas Appellate Justice Kathy Stone (Visiting Judge)

Figuring out how to unravel this smoke and mirrors mess required greater legal minds than my own and I must admire the way it was done. Judge Horwitz and Judge Kathy Stone have earned our respect.

Hall of Fame

I. Attorney Candice Schwager

Candice is a heroin without whose help we could have never come this far. They forced me to learn probate law in Texas. How do you think they like me now?

DISTRIBUTIONS AND DAMAGES

This would be a good time to take an inventory of living trust distributions since the passing of Nelva Brunsting. The Beneficiaries have received little or no benefit from the family trust in the past ten years while several non-beneficiaries have enjoyed distributions from the family trust:

- a. \$5000.00 Attorney Jason Ostrom
- b. \$5000.00 Attorney George Vie III
- c. \$6500.00 Andrews Kurth L.L.P. mediation
- d. \$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 probate able corpus?
- e. \$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?
- f. \$6500.00 Mediation with William Miller of Andrews Kurth LLP
- g. \$? Mediation with Judge Seymour - unknown

- h. \$? Mediation with Judge Davidson – unknown
- i. \$100,000 Distribution to Carole Brunsting
- j. No distributions to Carl or Candace
- k. -\$300,000.00+ in excess taxes due to trustee failure to distribute trust income to the beneficiaries.

None of this accounts for money spent on costs or fees already paid to attorneys by the beneficiaries such as [the \\$250,000 Carl testified that he had already paid Bayless](#). 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 or her non-disclosed and non-equalized distributions made in secret before Nelva passed.