1 REPORTER'S RECORD

2 VOLUME 1 OF 1

3 TRIAL COURT CAUSE NO. 412249-401

4 APPELLATE COURT NO. _____

5 THE ESTATE OF:) IN THE PROBATE COURT

6 NELVA E. BRUNSTING,) NUMBER 4 (FOUR) OF

7 DECEASED) HARRIS COUNTY, TEXAS

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12 AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT

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18 On the 28th day of June, 2019, the following

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

20 numbered cause before the Honorable James Horwitz

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

22 County, Texas:

23

24 Proceedings reported by Machine Shorthand

25

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1 VOLUME 1
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1 June 28, 2019

2 PROCEEDINGS:

3 THE COURT: Hello. Please be seated.

4 I'm going to call Case Number 412249-401,

5 In The Estate of Nelva E. Brunsting, Deceased.

6 When we get Ms. Curtis on the phone, I'll

7 have each counsel and pro se party stand, identify

8 yourself, and who you represent.

9 (Calling Ms. Candace Curtis on telephone)

10 MS. CANDACE CURTIS: This is Candace.

11 THE COURT: Hi, ma'am. This is James

12 Horwitz; I'm the judge in Harris County Probate Court 4.

13 MS. CANDACE CURTIS: Yes, sir.

14 THE COURT: We are on the record, and

15 we're just now starting; so, I'm going to have each

16 counsel stand and identify themselves and who they

17 represent.

18 MS. CANDACE CURTIS: Thank you.

19 MR. SPIELMAN: Good afternoon, Judge, my

20 name is Neal Spielman, and I represent Amy Brunsting.

21 THE COURT: All right.

22 MR. JADLOSKI: My name is Timothy

23 Jadloski --

24 MS. CANDACE CURTIS: Excuse me. Can you

25 turn that up a little bit 'cause I can't hear anything

1 going on in the background.
2 THE COURT: All right. I'll try to have
3 somebody that's more technical than me do this.
4 JUDGE COMSTOCK: Turning up the volume on
5 this device increases your volume, Ms. Curtis, but it
6 doesn't increase the volume of the attorneys in the
7 courtroom; do you guys want to approach?
8 THE COURT: Yeah, y'all can come on up.
9 All right. Counsel, why don't we start
10 over, okay.
11 MR. SPIELMAN: Judge, my name is Neal
12 Spielman; I represent Amy Brunsting.
13 MR. JADLOSKI: Your Honor, my name is
14 Timothy Jadloski, and I represent Anita Brunsting.
15 MR. REED: Cory Reed; I represent Candace
16 Vacek in the 403 case.
17 MS. BAYLESS: Bobby Bayless; I represent
18 Carl Brunsting.
19 MS. CAROLE BRUNSTING: And Carole
20 Brunsting; I'm pro se.
21 THE COURT: Okay. So, we have a motion
22 for sanctions and/or contempt filed by counsel for Amy
23 Brunsting.
24 MR. SPIELMAN: That's correct, Judge; and
25 Candace Curtis is on the phone as a pro se party,

1 correct?

2 THE COURT: Right. So, Ms. Curtis?

3 MS. CANDACE CURTIS: Yes.

4 THE COURT: I would like you to raise your

5 right hand and be sworn by the court clerk, please.

6 MR. CANDACE CURTIS: All right.

7 (Ms. Candace Curtis is sworn)

8 MS. CANDACE CURTIS: I do.

9 THE COURT: All right. Counsel, would you

10 like to proceed with your motion?

11 MOTION FOR SANCTIONS

12 ARGUMENT BY MR. SPIELMAN:

13 MR. SPIELMAN: Yes, thank you, Judge.

14 Essentially, Judge, we're here on a motion

15 for sanctions and contempt stemming from your recent --

16 the Court's recent order of February the 14th of 2019.

17 By way of review, Your Honor, that order was entered

18 following some pleadings that were filed by my office on

19 Amy Brunsting's behalf that were connected to a series

20 of five different pleadings that had been previously

21 filed by Ms. Curtis. The sum and substance of those

22 pleadings had to do with the suggestion or the argument

23 that this Court did not have jurisdiction over the case

24 that we're dealing with. And as you may recall, Judge,

25 part of what led to your order being signed in February

1 was the discussion about how the case came to be in this
2 courtroom from the federal court - Judge Hoyt's court -
3 pursuant to a motion to remand and an order of remand
4 that was signed by Judge Hoyt. The motion itself was
5 submitted by Ms. Curtis and her lawyer at the time -
6 Jason Ostrom. This Court then --
7 THE COURT: Is that the order dated March
8 16th, 2015 - an agreed order to consolidate cases?
9 MR. SPIELMAN: I did not bring that part
10 of the file with me, so I can't speak to the specific
11 dates.
12 THE COURT: It's the -- it's in your --
13 it's in my order denying plea and motion filed by Ms.
14 Curtis that I signed on February 14th, 2019. So, I
15 believe that's correct. Go ahead.
16 MR. SPIELMAN: Okay. Yeah.
17 And so then Judge Butts - prior to you
18 taking the bench - Judge Butts signed her own order
19 basically accepting the transfer. I do not recall, as I
20 stand here today, whether that was done of the Court's
21 own accord or if that was done in response to a motion
22 filed by Ms. Curtis/Mr. Ostrom; but either way - you
23 have the order from Judge Hoyt and then you have the
24 order from Judge Butts bringing that federal court case
25 into state court at Ms. Curtis' request; and yet, even

1 so, we had these five different pleadings and such
2 suggesting that this Court didn't have jurisdiction.
3 Your Honor may also recall that in and
4 around the same time period at other hearings we were
5 having, Ms. Curtis wasn't appearing, and there was some
6 discussion in the courtroom - not putting words into
7 anybody's mouth - but there was some discussion in the
8 courtroom as to whether or not Ms. Curtis wasn't
9 appearing at these hearings because she did not think
10 this Court had jurisdiction, and we talked about the
11 importance of getting everybody to the table, so to
12 speak, and that was the motivating factor for doing
13 everything that I did so that we had everybody in the
14 right place and we could recognize that the whole debate
15 about who had jurisdiction wasn't even really one that
16 should have been going on in any case.
17 So, fastforward to your order, Judge,
18 February 14th - you issued your order - sort of
19 confirming all of the things that we just said; and yet,
20 even so, subsequent to that - on March the 20th and then
21 again on April the 12th, this is all in 2019 - Ms.
22 Curtis filed two more pleadings or documents into Judge
23 Hoyt's federal court under the same cause of action that
24 had been transferred. So --
25 THE COURT: Is that the cause of action

1 entering in what four numbers?

2 MR. SPIELMAN: The --

3 THE COURT: Is that the 592?

4 MR. SPIELMAN: That is -- yeah. Yes, I

5 think so. Yes, the 592. So, those documents were the

6 application for orders to show cause why Defendants and

7 their counsel should not be held in contempt of this

8 Court's injunctive order. That was one document that

9 was filed. And then the second document that was filed

10 later was affidavit of Candace Louise Curtis in support

11 of application for orders to show cause. So, those were

12 the two documents that were filed into the federal court

13 case that had been closed and terminated prior to and

14 then confirmed again by your order.

15 THE COURT: And, Counsel, is that case

16 that ends in 592 in which she filed on April 12th, 2019,

17 and March 20th, 2019 - the same case number in which

18 Judge Hoyt had signed a agreed order to consolidate, and

19 that case was moved to probate court?

20 MR. SPIELMAN: Yes, Your Honor.

21 THE COURT: Same case?

22 MR. SPIELMAN: Yes, sir.

23 THE COURT: Okay. Go ahead.

24 MR. SPIELMAN: Okay. And so, those

25 actions right there - the March 20th and the April 12th

1 filing - are the ones that were taken subsequent to your
2 February 14th, 2019 order, and those two actions are the
3 ones that I am saying are the contemptuous actions
4 relative to what's been going on in this court and the
5 effort that was put forth to get everybody here and get
6 any confusion that might have existed - legitimate or
7 otherwise - resolved.
8 And so, that's really the sum and the
9 substance of the conduct that we're here to talk about,
10 Judge.
11 It's my position that - with regard to the
12 contempt and the request for sanctions - that none of
13 the conduct that was exhibited by Ms. Curtis with
14 respect to the five pleadings that led up to your order
15 or the two documents subsequent to your order were
16 proper, necessary, merit, full, had merit, and should
17 have ever been pursued because of the fact - like we
18 talked about earlier - because of the orders from Judge
19 Hoyt sending it over here and the order from Judge Butts
20 accepting it, it was well known to everybody - and
21 again, at Ms. Curtis' request - that we be here in this
22 court for the remainder of the litigation.
23 And, you know, I spent a lot of time and
24 effort to help get this properly positioned so that we
25 could start moving forward and making progress with the

1 development of the case - like I said before - trying to
2 get everybody that wanted to be at the table to the
3 table; and now, Judge, what I'm trying to do here is to
4 extend the analogy a little bit in a tortured fashion
5 is - now that everybody's at the table, let's make sure
6 we're all eating with the right fork. I just feel
7 like -- I said it would be a tortured analogy.
8 I feel like this case, from inception, has
9 been burdened by a lot of the conduct of Ms. Curtis and
10 the delays that she's caused and the pleadings that
11 she's filed and there's never been an opportunity - by
12 this Court, at least - to call her out on that to say
13 there is a proper way of conducting business; just
14 because you are a pro se party does not excuse you from
15 understanding how the process works and from following
16 that process. It has cost the parties' time. It is
17 going to cost the estate money. If it's not going to
18 cost the estate money, it's certainly going to cost my
19 client money, and it's time to send the message to Ms.
20 Curtis that there are consequences to the decisions that
21 she makes when she disregards this Court's order or
22 pursues ill-timed, poorly-thought-out, or other conduct
23 that's just contrary to the way we are to conduct
24 ourselves in a litigation.
25 Judge, you would not let me speak to Ms.

1 Bayless or write things about Ms. Bayless of the nature
2 that Ms. Curtis is writing about the lawyers. You would
3 not reward Mr. Reed for filing frivolous pleadings
4 attacking jurisdiction time and again, you know, if he
5 were to do something like that because we, as the
6 attorneys, we know what conduct we're held to. We know
7 what standards we're held to, and we know how to apply
8 and understand and perceive your rulings and the rules
9 of court; and Ms. Curtis has never been taught that
10 lesson.
11 One of the things that I pointed to in the
12 motion, Judge, is that this is not the first time that
13 this has come up. Yes, it's the first time that anybody
14 has really stood up and presented it in this courtroom,
15 but you can see from the history, you know, Judge Hoyt
16 recognized there was a problem with Ms. Curtis' conduct,
17 and he recognized, in an order, that it was hampering
18 the ability for the case to proceed forward, and it was
19 hampering the parties from fulfilling their
20 responsibilities. His order is not specific on which
21 parties, but I think the presumption could be Amy and
22 Anita as the co-trustees.
23 Nevertheless, Judge - Judge Hoyt saw the
24 problem with Ms. Curtis' behavior as so extreme that he
25 ordered her to get legal counsel, and that's the order,

1 Exhibit 4, that I put in my motion. She did follow
2 Judge Hoyt's order for about as long as it took for them
3 to come back into this court.
4 Shortly after the case was transferred and
5 accepted by Judge Butts, her counsel, Mr. Jason Ostrom,
6 was fired by Ms. Curtis, and she resumed this conduct of
7 wildly using the wrong court, filing ill-conceived
8 motions, doing the two things that Judge Hoyt warned her
9 against or wrote about which was hindering necessary
10 discourse and preventing the parties from fulfilling
11 their responsibilities.
12 For the longest period of time, we spent
13 our time stuck in a different federal court proceeding
14 because of an ill-timed, poorly-conceived, frivolous
15 lawsuit. That is also referenced in my motion. That
16 was what Judge Bennett said about Ms. Curtis' RICO case;
17 and not only did Judge Bennett say that, but then the
18 Fifth Circuit Court of Appeals said that.
19 So, we have now three courts highlighting
20 the problems that we are seeing and experiencing here in
21 this court with Ms. Curtis and her behavior.
22 And I guess, Judge, my point in all this
23 is that it's time to send a message to Ms. Curtis, and I
24 think that message is going to be best understood by her
25 in the form of a contempt, a sanction, and a monetary

1 penalty and fee, and that's why I wrote the motion the
2 way I did; and that's why I submitted my affidavit in
3 support of the attorney's fees that I have incurred on
4 Ms. Bruns -- on Amy's behalf dating back to the original
5 five filings all the way through to today's hearing.
6 THE COURT: Mr. Spielman, who was the
7 federal judge in this 592 case, do you remember?
8 MR. SPIELMAN: The 592 was Judge Hoyt, I
9 believe.
10 THE COURT: All right. And he is the one
11 that closed the federal -- this 592 case, granted the
12 Plaintiff's motion to remand in the order of transfer
13 and to have all of this brought back under our current
14 case number; is that correct?
15 MR. SPIELMAN: Well, Judge Hoyt granted
16 Plaintiff's motion to remand and then the order of
17 transfer that you just mentioned was the document signed
18 by Judge Butts in this court. But, other than that,
19 yes.
20 THE COURT: All right. So, without going
21 into the merits of her application for orders to show
22 cause -- well, let me ask you this.
23 What has happened in federal court since
24 this was filed in March and April of this year?
25 MR. SPIELMAN: Well, that's an interesting

1 question, Judge, because what happened there is,
2 apparently, the Court called her -- those pleadings,
3 those federal court filings, to hearing. I did not get
4 notice of that from the Court. I received an email from
5 Ric Munson - who is connected to Ms. Curtis - the
6 evening before. By the time I got to the office and saw
7 that email, the hearing had already transpired. I don't
8 want to speak for Mr. Mendel and Mr. Jadloski, but I
9 don't believe they received Mr. Munson's email at all.
10 So, I cannot say specifically what was discussed during
11 the telephonic conference, but I am aware that --
12 THE COURT: You say "telephonic
13 conference" - what do you mean?
14 MR. SPIELMAN: The Court had a telephonic
15 conference with Ms. Curtis. We were all instructed,
16 apparently, to call in rather than show up.
17 THE COURT: Okay.
18 MR. SPIELMAN: And, you know, I regret not
19 bringing it with me. I know I printed it out. There is
20 a docket sheet entry from that proceeding, and I know
21 we're on the record so I don't want to misquote, so I
22 will say that I'm just sort of going from memory, words
23 to the effect of - we're not going any further because I
24 already closed this X years ago.
25 THE COURT: All right. And have you

1 subsequently researched that to make sure that's the
2 finding of that court?
3 MR. SPIELMAN: I have -- I am -- I can 100
4 percent say yes, I have; I can 90 percent say I printed
5 it out; I can 100 percent say I can get that to you or
6 go and print it out if that's something you would like
7 to look at.
8 THE COURT: And, Counsel, do you have
9 anything to add to that?
10 MR. JADLOSKI: Other than that I support
11 the motion, no, Your Honor, I don't.
12 THE COURT: But any information about what
13 the federal court did in reference to this application
14 other than to say this matter's been closed?
15 MR. JADLOSKI: I have nothing else to add,
16 Your Honor, except that I can confirm - yeah, we did not
17 get notice of the hearing.
18 THE COURT: Counsel, do you have anything?
19 MR. REED: Yes, Your Honor.
20 If you look at every time when Ms. Curtis
21 has filed any of these pleadings in the federal court -
22 next to when you get the email notice - notification of
23 a filing - it says, specifically, "case closed" and then
24 it will have the filing information. So, the federal
25 court, their notation in their system is - "case

1 closed".

2 THE COURT: All right. Ms. Bayless, do

3 you have any information to add?

4 MS. BAYLESS: No. I mean, I agree with

5 what Mr. Reed just said, you know, it would show up as

6 "closed".

7 THE COURT: All right. So, what are you

8 seeking today, Mr. Spielman?

9 MR. SPIELMAN: I'm seeking an order of

10 contempt based off of her - Ms. Curtis' - violation of

11 your February 19 -- your February 14th, 2019, order and

12 that contempt can take whatever form this Court desires

13 from the 500-dollar civil max penalty to just an order

14 saying that you're in contempt for not following my

15 order.

16 I'm also seeking, as a sanction, the

17 attorney's fees that were incurred by my client while I

18 took the actions that I described in my affidavit dating

19 back from the first of the five filings through standing

20 here today. And the only thing I will say about that

21 affidavit is that in it, there is a portion where I

22 estimated the amount of time that I would spend between

23 the date of the filing of this motion and today's

24 hearing - I estimated that as five hours. I have not

25 spent five hours. I would -- if we had to round up, I

1 would say two hours from 1.7 or something of that
2 nature.
3 THE COURT: In your affidavit for
4 attorney's fees, you're seeking attorney's fees for work
5 done going back to the receipt and review of the pleas
6 in abatement and the plea to the jurisdiction?
7 MR. SPIELMAN: Correct. And the reason
8 I'm doing that, Judge, is because, you'll remember - I
9 made no such request at the time even though it was
10 pretty obvious from the history of the file and Ms.
11 Curtis' own actions that none of those five documents
12 should have been filed by then; but at that time, it was
13 more important for me to get us all on the same page
14 than it was to argue about sanctions and fees. That
15 changed in my mind when Ms. Curtis then filed her next
16 two documents. And since the rules allow for us to seek
17 sanctions retroactively while the case is pending, I
18 felt like the best way to send the message was to go all
19 the way back to the beginning.
20 THE COURT: In your responses to the plea
21 in abatement and plea and the jurisdiction - which I
22 don't have in front of me - did you request attorney's
23 fees?
24 MR. SPIELMAN: I did not.
25 THE COURT: All right.

1 MR. SPIELMAN: And, in fact, Judge, I
2 don't know that I've -- I don't know that the documents
3 that I would have filed would have been styled as a
4 response per se because I -- what was it... I think it
5 was motion for -- whatever I called it. I didn't call
6 it a "response" because we were doing more than just the
7 response. But you'll remember, Judge, I think that -- I
8 know what I called it - motion for clarification --
9 THE COURT: Motion for clarification and
10 to dismiss.
11 MR. SPIELMAN: Right. And then within the
12 context of Ms. Curtis' response and our reply, we
13 brought up the issue of these five pleadings, was
14 brought up, and that's what allowed Your Honor to
15 dispose of them in your order.
16 THE COURT: How much time do think you've
17 spent on this particular matter?
18 MR. SPIELMAN: As far as drafting?
19 THE COURT: Including this hearing today.
20 MR. SPIELMAN: We could -- well, let --
21 we could call it five hours.
22 THE COURT: I think you just said you
23 hadn't spent --
24 MR. SPIELMAN: Well, I thought you were
25 asking me -- you're asking me from the time I filed the

1 motion through today how much time I did spend?
2 THE COURT: Well, on this matter. I
3 assume that you spent time before you filed the motion.
4 MR. SPIELMAN: Correct. I may have
5 misinterpreted your question from day one which was
6 the -- which would have been receipt and review of
7 the --
8 THE COURT: March 20th.
9 MR. SPIELMAN: August 20 -- so between
10 August 20th, '18 and October 2018 which is when Ms.
11 Curtis started the plea in abatement process.
12 THE COURT: I apologize for not being
13 clear. What I'm curious about is -- I understand that
14 sanctions can go retroactive; what I was curious about
15 is the very first time you got notice of Ms. Curtis
16 filing something in federal court was, I assume, March
17 of 2019 in the latest round she did --
18 MR. SPIELMAN: I understand.
19 THE COURT: -- from that time until today,
20 approximately, what was the file?
21 MR. SPIELMAN: Judge, that's what I was
22 saying. If we want to call it five hours, just the
23 preparation of this motion, the receipt of Ms. Curtis'
24 response, the preparation for the hearing and the
25 appearance here at the hearing, we could call that five

1 hours.

2 THE COURT: All right. And I believe you

3 also requested in addition or in the alternative to

4 further -- Ms. Curtis from making further filings in the

5 federal court?

6 MR. SPIELMAN: That's correct, Judge; I

7 would hope that although Ms. Curtis had been on the

8 phone with Judge Hoyt and got that ruling or that

9 instruction from him that maybe the injunction wouldn't

10 be necessary. But, sure, yes. I mean, I do think, I do

11 think as many times as we need to say that the case is

12 closed, do not file anything in it, I mean, certainly if

13 past predicts the future, it can't hurt to have an

14 injunction to that effect.

15 THE COURT: All right. Anything further,

16 Counsel?

17 MR. SPIELMAN: No, thank you, Judge.

18 Thank you for indulging me.

19 THE COURT: Ms. Curtis?

20 MS. CANDACE CURTIS: Yes, Your Honor.

21 THE COURT: Would you like to respond,

22 please?

23 ARGUMENT BY MS. CANDANCE CURTIS:

24 MS. CANDACE CURTIS: I've answered Mr.

25 Spielman in writing; so, my position is a matter of

1 record. And also, for the record, no one has even
2 replied to my pleading in this court.
3 THE COURT: Do you recall having a
4 telephone hearing with Judge Hoyt in federal court in
5 reference to --
6 MS. CANDACE CURTIS: Yes, Your Honor, and
7 I prefaced the conversation with the fact that it was an
8 ex parte communication, and he simply corrected my
9 misunderstanding in which I thought the judge who had
10 issued an injunctive order would be the one to uphold
11 the order, and he informed me that that was incorrect
12 and that when he issued the remand order, it says in
13 there that "It's further ordered that all orders
14 rendered by this Court shall carry the same force and
15 effect during the remand that they would have if the
16 remand had not been ordered." And this injunctive order
17 was filed in the probate court on February 6th, 2015,
18 along with the report of master.
19 THE COURT: So, did you understand from
20 Judge Hoyt that you were not to file anything further in
21 that federal court case ending in 592?
22 MS. CANDACE CURTIS: What he said was,
23 "mandamus."
24 THE COURT: I apologize, I couldn't
25 understand.

1 MS. CANDACE CURTIS: What he suggested was
2 "mandamus."
3 MR. SPIELMAN: Maybe she's trying to say
4 "mandamus"?
5 MS. CANDACE CURTIS: Mandamus. Okay.
6 Excuse me.
7 THE COURT: Did he tell you that that 592
8 case was closed and all matters were transferred to the
9 probate court?
10 MS. CANDACE CURTIS: Yes, Your Honor, he
11 did.
12 THE COURT: All right. So, with that
13 understanding, do you know not to file anything further
14 in the Federal Case 592?
15 MS. CANDACE CURTIS: Yes, Your Honor, I
16 do.
17 COURT'S RULING:
18 THE COURT: All right. I'm going to take
19 this matter under advisement, and I will -- if you want
20 to issue -- send me a proposed order, Mr. Spielman.
21 Ms. Curtis, if you have a proposed order
22 you want to send to me - you're welcome to do that as
23 well; and I'll review the record, argument of counsel,
24 I'll reread your pleading, Ms. Curtis, as well as the
25 statement that you've told me what Judge Hoyt told you,

1 and I'll get back with everybody.
2 MR. SPIELMAN: Your Honor, one point, I'm
3 sorry.
4 First of all, I apologize if I did not
5 send in an order. That is a mistake on my part. I will
6 get you what you've asked for.
7 Number two is - would the Court -- like I
8 said, I'm almost positive there is some kind of either a
9 docket entry or a written order of some sort from Judge
10 Hoyt following the telephonic conference in 2019. I'm
11 happy to confirm that and send that in or if I'm wrong,
12 I will send an email that says --
13 THE COURT: That's fine. But admission of
14 a party opponent, she's acknowledged that the judge told
15 her not to file anything else.
16 MR. SPIELMAN: And then the third thing,
17 just for clarification purposes. I guess I'm wondering
18 if Ms. Curtis would confirm for the Court, and for us,
19 that what she wants you to read in response to all of
20 this is the document that she filed that's got a pretty
21 long title: Response To Fiduciary's Application For The
22 Beneficiary To Be Held In Contempt For Seeking To
23 Enforce The Injunction Commanding The Trustee To Perform
24 Fiduciary Duty Owed To The Beneficiary Petition For
25 Partial Summary Or Declaratory Judgment.

1 If that's the document that she's
2 referring to, then I think we have all sorts of problems
3 depending on what the Court is going to do with this
4 after the Court reviews it.
5 THE COURT: Well, that's the document you
6 wanted me to review, right, Ms. Curtis?
7 MS. CANDACE CURTIS: Yes, Your Honor, it
8 is.
9 THE COURT: All right. I've looked at it
10 once. I'll be glad to look at it again. And at this
11 time, I'm going to end this hearing, and y'all are
12 excused. I'll be back in touch. Please provide me with
13 proposed orders.
14 MR. REED: Your Honor, real quick before
15 we end this hearing.
16 We previously came down - I know this
17 isn't before you, but since we're all here, I wanted
18 some guidance on how you want to handle this in the
19 future - on a request for a representative of the estate
20 to be appointed for my 403 case, and I know we got some
21 subsequent orders after that hearing, but none of them
22 touched on that.
23 THE COURT: Who is your client, again?
24 MR. REED: I'm in the 403 case - the
25 malpractice part. And so, my client is, frankly, in

1 limbo until this Court appoints somebody in charge of
2 the estate. And so, we've had several hearings on this
3 so far with no orders; and frankly, it's probably the
4 biggest issue for my client because I can't proceed
5 forward or backwards or any way without someone.
6 THE COURT: And if I understand it right,
7 your client was the representative of the estate; he has
8 resigned.
9 MS. BAYLESS: Right.
10 THE COURT: And your two clients want to
11 be that or one of them wants to be that.
12 MR. SPIELMAN: I think "wants to" might be
13 a strong term. I think the substance of it goes like
14 this, Judge:
15 Carl Brunsting was the executor of the
16 estate and filed the lawsuit against the law firm in
17 that capacity because he was the executor of the estate
18 under the Will. When he resigned, the Will then says
19 that my client, Amy, is next, and then Ms. Curtis is
20 underneath her. There are, then, the competing
21 applications between Amy and Ms. Curtis about taking
22 over the role of Mr. Brunsting.
23 THE COURT: As successor executor?
24 MR. SPIELMAN: As successor executor.
25 Somewhere in this process, we have also

1 brought up the question of whether or not that lawsuit
2 is an asset of the estate because if that lawsuit is an
3 asset of the estate, then it's really part of the Trust
4 which means it's now Amy and Anita as the current
5 co-trustees - that would be the people with the ability
6 to do what Mr. Reed is so desperately looking for which
7 is - negotiate some way out of that for his client and
8 then --
9 MS. CANDACE CURTIS: I believe that is
10 correct --
11 MR. SPIELMAN: I'm sorry?
12 THE COURT: Yes, Ms. Curtis?
13 MS. CANDACE CURTIS: I believe that Mr.
14 Spielman is correct.
15 THE COURT: Thank you.
16 MR. SPIELMAN: Then I'm going to stop
17 talking.
18 MR. REED: Well, that's a first.
19 THE COURT: And if I remember from our
20 previous hearings, you don't want to be the
21 representative.
22 MS. CAROLE BRUNSTING: I did want to be
23 the rep --
24 THE COURT: Oh, you do. But other people
25 object to that; is that right?

1 MR. SPIELMAN: I don't know that any
2 people officially objected, but I don't think that's --
3 that's certainly not what Mom and Dad wanted when they
4 wrote their documents, and I don't think it would be
5 productive --
6 MS. CAROLE BRUNSTING: I have the --
7 MR. SPIELMAN: -- in large part
8 because --
9 THE COURT: I'm sorry, ma'am?
10 MS. CANDACE CURTIS: It think it's a
11 little presumptuous, Mr. Spielman, for you to say what
12 Mom and Dad wanted.
13 THE COURT: Ms. Curtis, Ms. Curtis let me
14 swear in your sister if I could.
15 (Ms. Carole Brunsting sworn)
16 MS. CAROLE BRUNSTING: I believe he made a
17 comment at one time that if I had supported my siblings
18 that they agreed that I could take over that role, that
19 was something to consider.
20 THE COURT: And this is to take over as
21 the successor executor?
22 MR. SPIELMAN: I believe that's --
23 THE COURT: Is that what we're talking
24 about?
25 MR. REED: I'm not sure that it's that

1 exact position; I think it would be -- I'm a little
2 unfamiliar with the probate world, but what I understand
3 it to be is a representative of the estate. So, if it's
4 a successor --
5 THE COURT: I mean, she's not named in the
6 Will; so, if we did that, it would have to be in some
7 administrator status.
8 MS. CAROLE BRUNSTING: This is something
9 we've been talking about this for years and years and
10 years. It's something I would really like to go ahead
11 and make the decision so I --
12 THE COURT: Is that motion before the
13 Court? Not today, but is it, generally, before the
14 Court?
15 MR. REED: It hasn't. Well, it's been
16 vaguely pled in various motions, and that's why --
17 THE COURT: Well, if y'all want to, you
18 know, if somebody wants to bring it to the Court, you
19 know, and --
20 MR. REED: The problem is --
21 THE COURT: -- have a hearing on it, we
22 can do that. I'm not going to do it today, I can tell
23 you that.
24 MR. SPIELMAN: I don't think there's any
25 motion by Carole Brunsting seeking to take --

1 MS. CAROLE BRUNSTING: I can file a motion
2 if I need to.
3 MR. SPIELMAN: And we can deal with that
4 at that time.
5 THE COURT: And the -- between y'all, you
6 can't reach a settlement? Have you tried to reach a
7 settlement on an appointment of a person?
8 MR. SPIELMAN: I mean, the closest that
9 we've gotten to anything was just now when Ms. Curtis
10 said she agreed with me about what would happen if it
11 was, in fact, an asset of the estate - it would belong
12 in the Trust. So, that's, of course, the other question
13 is - if that's the correct analysis, then there really
14 isn't a need for an executor of the estate because I
15 think the thing that everybody would agree on is that
16 but for that lawsuit, there is nothing else as an asset
17 of the estate; anything else, is in the Trust. And so,
18 if that's where that lawsuit belongs --
19 THE COURT: Then we have a continuing
20 argument over who's the proper trustee of the Trust; is
21 that correct?
22 MR. SPIELMAN: Because of the qualified
23 beneficiary designations and the power of -- I'll
24 butcher the terms --
25 THE COURT: That's the substance of the

1 malpractice lawsuit, is it?

2 MR. SPIELMAN: Correct.

3 THE COURT: She did some work to appoint

4 somebody - your clients - as co-trustees and somebody

5 thinks that's not correct; and hence, we go forward on

6 that one.

7 MR. SPIELMAN: And we just finished the

8 deposition of the drafter of those documents - Ms.

9 Freed - yesterday here at the courthouse. Thanks

10 everyone for their hospitality. And now I think we

11 have, at least I do, I have a much better clearer and

12 validating understanding of why Amy and Anita are, in

13 fact, properly named. I suspect Ms. Bayless would

14 disagree but that is also not for --

15 MS. BAYLESS: You're right.

16 MR. SPIELMAN: -- for today's proceeding.

17 MR. REED: And from my standpoint, that's

18 a battle between the siblings. My client has been sued

19 for the last seven years and wants to move forward with

20 defending her name in this lawsuit, and she can't until

21 this court appoints somebody to be the plaintiff of that

22 lawsuit.

23 MS. BAYLESS: I'll bring one other point.

24 I think it will behoove everyone to try to

25 settle everything; although, that sounds ambitious, I

1 understand. But I just learned today there was to be an
2 appraisal of the Iowa farm property which was supposed
3 to facilitate some discussions about settlement; and
4 apparently, that hasn't been initiated yet. I don't
5 know if you have an estimate of how long it's going to
6 take, but I don't know if we would have the information
7 to do that right now if we wanted to be particularly
8 productive.
9 THE COURT: Well, and I remember this
10 case. It reminded me of a Chinese finger puzzle - once
11 you put your finger in it, you can't get your finger
12 out.
13 MS. BAYLESS: Wacamole-kind-of.
14 THE COURT: Well, if y'all want to try to
15 find somebody that you can agree on to be either a
16 successor executor or a administrator --
17 MS. BAYLESS: Temporary administrator.
18 THE COURT: -- which would be a title that
19 somebody who isn't named as an executor would have to
20 utilize - I'm all for it. If y'all can't get an
21 agreement on it, then I think we do need to get somebody
22 appointed, and the Court can use its inherent power to
23 get that accomplished if y'all can't agree among
24 yourselves. I think it's time for y'all to - like an
25 old truck driver said - shift or get off the lot, you

1 know.

2 MR. SPIELMAN: Is that exactly what he

3 said, Your Honor?

4 MR. JADLOSKI: Judge, if I might ask just

5 a point of clarification.

6 You said you'd like to see us get someone

7 appointed. As Mr. Spielman explained earlier - there's

8 the possibility that we don't need someone appointed if

9 it's an as -- are we saying that someone becomes the

10 person that whether it be ...

11 THE COURT: You know, if that person is

12 representing the estate, they may help make the

13 determination of whether it's an asset of the estate or

14 not. I mean, I think what happens in cases like this is

15 everybody tries to put pieces of it in their mouth and

16 swallow the whole thing and we choke on it. And I think

17 we're better off just going ahead and swallowing a

18 little piece first. And let's, you know, if somebody

19 wants to bring something forward to me, I'll be glad to

20 deal with it; otherwise, see if you guys can actually

21 get somebody - and this includes you, of course, Ms.

22 Curtis - because you are second in the pecking order on

23 successor executors. Let's see what we can get done. I

24 mean, I'm glad to work with y'all on that.

25 MR. SPIELMAN: Judge, just thinking aloud

1 real quick. So, I would not suggest him at this point
2 because of some things, but your approach right now is
3 very similar to what Judge Comstock and Judge Butts did
4 or what was maybe their intention in naming Mr. Lester
5 at one point to do some work as - and I always butcher
6 his position - temporary administrator or something
7 along those lines.
8 But, you know, we've heard a lot so far in
9 some of the commentary of the siblings themselves that
10 the attorneys making the decisions and the Courts making
11 the decisions. We didn't know Elmer and Nelva. We
12 don't know their family other than as the lawyers. I'm
13 wondering out loud, without having spoken to my client
14 about it, if the siblings might know of a family friend,
15 somebody that they all trust, somebody that knew Elmer
16 and Nelva, if there might be - rather than Frost Bank
17 who is going to charge a crazy amount of money to do
18 this - if there might be a family friend that might
19 garner some confidence and some agreement amongst the
20 siblings if they had ideas to submit possible names. I
21 certainly wouldn't mind asking my client to do something
22 like that if there was such a person and potentially
23 even recommending that we let such a person do this if
24 they were inclined to do so.
25 MS. CAROLE BRUNSTING: And I realize I'm

1 pro se, but I've done a lot of work and I've really done
2 my best to contact my siblings and I really believe that
3 left on their own to make the decision and not be
4 influenced by their attorneys, that they would agree
5 that - because I've stayed so involved, I've attended
6 every single hearing, I've been involved as much as I
7 possibly can - that I would be the logical choice; and I
8 do realize I would have to have legal counsel which I've
9 already -- I already know the legal counsel that I would
10 retain.
11 THE COURT: Well, today is beyond the
12 power of the Court to just, you know, snap my fingers
13 and say that, but it's something to consider. I'm going
14 to ask y'all to work seriously to try and come up with
15 something and someone, and if you can't make an
16 agreement, then let's have a hearing on that, and I'll
17 appoint somebody.
18 MS. CAROLE BRUNSTING: I have one other
19 concern is - every time we appoint an outside party, it
20 ends up costing the Trust, in my opinion, quite a bit of
21 money, and it also causes a delay because they want six
22 months to a year and then we're delayed again where I
23 know that I can get started immediately.
24 THE COURT: Well --
25 MS. CAROLE BRUNSTING: So, I can file a

1 motion --

2 THE COURT: All right.

3 MS. CAROLE BRUNSTING: -- to do that.

4 THE COURT: All right. Y'all are excused.

5 Thank you, Ms. Curtis. I'm going to disconnect.

6 MS. CANDACE CURTIS: Thank you.

7 THE COURT: Bye-bye.

8 Y'all have a good weekend.

9 MR. SPIELMAN: Thank you.

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1 The State of Texas)
2 County of Harris)
3
4 I, Hipolita Lopez, Official Court Reporter in and
5 for the Probate Court Number Four of Harris County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.
13 I further certify that this Reporter's Record
14 truly and correctly reflects the exhibits, if any,
15 admitted by the respective parties.
16 I further certify that the total cost for the
17 preparation of this Reporter's Record is $240.50.
18 and was paid by Ms. Candace Curtis.
19 WITNESS MY OFFICIAL HAND this the 18th day of
20 July, 2019.
21
22 /s/ Hipolita G. Lopez
HIPOLITA G. LOPEZ, Texas CSR #6298
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Probate Court Number Four
24 Harris County, Texas
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