1 REPORTER'S RECORD

2 VOLUME 1 OF 1

3 COURT CAUSE NO. 412.249-401

4 APPELLATE NO. _____

5 THE ESTATE OF:) IN THE PROBATE COURT
NELVA E. BRUNSTING,) NUMBER 4 (FOUR) OF
6 DECEASED) HARRIS COUNTY, TEXAS

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11 MOTION TO TRANSFER

12 STATUS CONFERENCE

13 MOTION FOR CONTINUANCE

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18 On the 9th day of March, 2016, the following
19 proceedings came to be heard in the above-entitled and
20 numbered cause before the Honorable Clarinda Comstock
21 Judge of Probate Court No. 4, held in Houston, Harris
22 County, Texas:

23

24

25 Proceedings reported by Machine Shorthand

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1 VOLUME 1
(MOTION TO TRANSFER/STATUS CONFERENCE/
2 MOTION FOR CONTINUANCE)

3 March 9, 2016

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1 March 9, 2016

2 PROCEEDINGS

3 THE COURT: Okay. So, calling Cause
4 Number 412.249 in the 409, Nelva E. Brunsting, Deceased.
5 We have several matters to address in this
6 file today.
7 We were asked to consider a motion to
8 transfer consolidate -- motion to transfer cause in
9 district court to Probate Court 4 which is what was
10 originally set in this case. I now have a motion for
11 continuance in that matter or for continuance of that
12 motion.
13 Zandra Foley, the attorney representing
14 Candace Kunz-Freed and Vacek & Freed; is anyone here
15 from that firm today?
16 MR. REED: I am, Your Honor. Cory Reed
17 for Thompson, Coe.
18 THE COURT: Thank you. I'm sorry, tell me
19 your name again.
20 MR. REED: Cory Reed.
21 THE COURT: How do you spell your last
22 name?
23 MR. REED: Reed, R-E-E-D.
24 THE COURT: Say it again.
25 MR. REED: R-E-E-D.

1 THE COURT: Thank you. You speak very
2 quickly.
3 Okay. Why don't we start with
4 announcements. We've heard from Mr. Reed, could we
5 start with you, Mr. Spielman.
6 MR. SPIELMAN: Yes, Judge. Neal Spielman
7 representing Amy Brunsting.
8 MR. MENDEL: Steve Mendel representing
9 Anita Brunsting.
10 MS. BRUNSTING: And I'm Carole Brunsting,
11 and I'm now pro se. Darlene Payne Smith was my attorney
12 but now I'm pro se.
13 THE COURT: Thank you.
14 MR. LESTER: I'm Greg Lester. I was
15 temporary administrator and now I'm, I'm observer, I
16 guess, participant.
17 THE COURT: Thank you.
18 MS. CURTIS: Candace Curtis, pro se.
19 MS. BAYLESS: Bobbie Bayless on behalf of
20 Drina Brunsting as Attorney In Fact for Carl Brunsting.
21 THE COURT: Thank you.
22 Is anyone here inclined to stand up and
23 begin this proceeding or should I?
24
25

1 MOTION TO TRANSFER

2 ARGUMENT BY MS. CURTIS:

3 MS. CURTIS: Okay. So, I guess the first
4 thing that we're talking about is my motion to transfer
5 the district court case into Probate Court Number 4.
6 And there's been a response with an
7 objection saying that they are not the same questions in
8 both courts; and so basically, all equitable claims
9 related to the estates of our parents belong in this
10 court. All equitable remedy belongs before this Court.
11 The causes of action in Curtis v.
12 Brunsting are equitable. They are not legal causes of
13 action. In other words, they do not sound in tort or
14 contract actions in law. That distinction must be
15 maintained --
16 THE COURT: Ms. -- I don't mean to -- I'm
17 sorry. I feel a little pressured for time because I'm
18 running so far behind today --
19 MS. CURTIS: This is real short.
20 THE COURT: Okay.
21 MS. CURTIS: So, Ms. Foley refers to the
22 district court action as a legal malpractice action, but
23 legal malpractice shows up in the district court case as
24 many times as to actual theories pending in the district
25 court case, appear in her objection. She refers to the

1 district court case as a legal malpractice action 42
2 times in her response. But the complaint in the
3 district court never mentions "malpractice." So, the
4 causes of action are the same in the district court as
5 they are here with the exception of the Deceptive Trade
6 Act. And there is a negligence, and those causes appear
7 zero times in Ms. Foley's objection.
8 So, I just -- I don't think that there is
9 representation in the district court for any of the
10 matters in this court. And so, they need to come over
11 here so that we can discuss all of the things that are
12 the same in both cases and decide the facts. And they
13 want to go back and deal with malpractice in the
14 district court - that's fine.
15 THE COURT: Okay. Would you like to
16 respond?
17 MR. REED: I'll let you finish and see if
18 I still need to say anything.
19 THE COURT: I'm disinclined because the
20 motion for continuance was filed. I'm, I guess, I'm
21 disinclined to make a ruling on that motion today; but I
22 have to say that it seems to me like all of these --
23 like you're correct - that these matters would best be
24 handled in the probate court.
25 I'm hesitant because it seems to me that

1 if everyone were in one venue, that it would be easier
2 to come to some sort of resolution in this case. And I
3 think that this case is begging for some kind of
4 resolution, perhaps, outside of a ruling by one of the
5 courts that's involved.
6 Having said that, I didn't want to waste
7 your time, Ms. Curtis; I know that you've come from
8 California, and I wanted to give you all the opportunity
9 you needed to voice your concerns on that issue, and I
10 want to go forward with the status conference today and
11 get as much accomplished as we can.
12 I'm happy to hear the motion for
13 continuance. I'm happy to continue the motion to
14 transfer until a later date so that we could hear from
15 your firm. I don't know whether you or Ms. Foley is the
16 more appropriate person to respond to that motion. I
17 was hopeful that we might be able to get a response from
18 you today about the substance; are you still wanting to
19 continue that?
20 MOTION FOR CONTINUANCE
21 ARGUMENT BY MR. REED:
22 MR. REED: Yes, Your Honor, our client
23 would prefer Ms. Foley to argue it so we would continue
24 our -- or seek to continue today's hearing. I mean, if
25 you have any specific questions -- I mean, one of your

1 concerns seems to be that it makes more sense to have
2 everyone here for resolution like it's not even adding
3 this -- the malpractice case is not going to help this
4 case get resolved at all. It is going to take a ruling
5 from the district court or this case to resolve this
6 matter.
7 Having monitored this case for the past
8 two years, it's going to take a ruling from the Court to
9 resolve the case. So, I just, you know, would implore
10 the Court not to bring over the malpractice case, let us
11 get a ruling in that court, be done with that case, and
12 you guys continue on with what's going on here.
13 THE COURT: Well I'm interested to hear
14 from you or from Ms. Foley about you think those issues
15 are better addressed in the district court than in the
16 probate court where, you know, so much -- such similar
17 issues are pending.
18 MR. REED: And I guess that's where we
19 disagree on the "similar issues are pending."
20 In our mind, the only thing that's at
21 issue is whether our -- the firm drafted the documents
22 as requested by Ms. Brunsting. So, all these issues,
23 whether she had capacity at the time, whether there was
24 conspiracies or what not, that has no bearing, really,
25 on the ultimate outcome of the malpractice case. The

1 only determination that would be made in our case is, is
2 whether the lawyers acted like a reasonable lawyer
3 should or would have done under similar circumstances.
4 THE COURT: Is that the meat of your
5 summary judgment over in the district court is whether
6 your client drafted the documents as requested?
7 MR. REED: The meat of our no-evidence
8 motion is you have no evidence of any of the claims that
9 have been brought against us. So and the point being
10 there, at the time Carl Brunsting was the executor, he
11 made, you know, a 30-page-plus of claims, took his
12 deposition, had no facts to support any of it. I don't
13 think anyone else in this room could step into that
14 chair and have facts that could support the conduct they
15 made in the malpractice case.
16 So, again, just bringing us over here is
17 just going to delay us, and it's definitely not going to
18 help resolve the malpractice claims.
19 THE COURT: Okay. Ms. Curtis?
20 MS. CURTIS: Can somebody explain to me
21 how the claims in district court are malpractice claims?
22 That's what I just can't see. They don't say,
23 "malpractice." The only thing that could possibly be
24 malpractice is maybe negligence, but never once is
25 "malpractice" stated in the claims. Never.

1 THE COURT: There are lots of ways of
2 drafting things, and I'm not familiar with the pleadings
3 over in the district court to that extent; so, I'm
4 not -- I'm really not the appropriate person to respond
5 to that for you. There are a lot of lawyers, although
6 they seem to be dropping, there are a lot of lawyers
7 still involved in this case who might be able to better
8 address that for you.
9 I would like to hear from everyone. Now
10 that Mr. Lester has provided his report to the Court, I
11 would like to hear from everyone about where you think
12 we stand and how you feel this case ought to progress.
13 Does somebody want to volunteer to go first?
14 STATUS CONFERENCE
15 ARGUMENT BY MR. MENDEL:
16 MR. MENDEL: We'd like you to order these
17 parties to mediation, designate who the mediator is,
18 give us a time frame to get it done. That was
19 recommended in a report, and I think that would be an
20 effective use of the parties' time.
21 THE COURT: Okay. Ms. Curtis, do you have
22 a response to that?
23 MS. CURTIS: We've been to mediation
24 already in this case. It was shortly after my case was
25 remanded to the probate court --

1 THE COURT: Who was the mediator on that?
2 MS. BAYLESS: Bill Miller.
3 THE COURT: Sorry?
4 MS. BAYLESS: Bill Miller.
5 MS. CURTIS: And nothing was resolved.
6 And I'm not going to go to mediation again because we've
7 already been there once. The only issue that really was
8 discussed were how the attorneys were going to get paid,
9 and that doesn't matter to me.
10 I want my summary judgment motions heard,
11 and if we can do that without bringing the district
12 court case over here, then we should go ahead and do it.
13 But that's my purpose for coming here today - is to get
14 the summary judgment motions set for hearing. And I'm
15 not going to go to mediation, again, because there is no
16 point.
17 MR. SPIELMAN: Judge -- were you going to
18 say something?
19 THE COURT: Please proceed.
20 STATUS CONFERENCE
21 ARGUMENT BY MR. SPIELMAN:
22 MR. SPIELMAN: We all, collectively, the
23 parties and their counsel at the time, we all agreed to
24 Mr. Lester taking the role that he was taking. And Ms.
25 Curtis, herself, I believe, on the record, spoke of

1 having done her due diligence into every person that was
2 suggested by any attorney that was in this room to serve
3 in Mr. Lester's role, and it was Ms. Curtis' opinion
4 that only Mr. Lester can serve in that role.
5 We all, as attorneys or as pro se parties,
6 agreed that what the function that was designated to Mr.
7 Lester was important, was necessary, and that we were
8 going to live by and abide by the report that he wrote.
9 The problem that I see right now, and one
10 of the reasons I suspect why Mr. Mendel suggested that
11 we go to mediation is in deference to and with respect
12 for what Mr. Lester said in his report and what he seems
13 to be trying to suggest to the parties as to what the
14 future of this lawsuit might hold.
15 I think that what we're seeing now is an
16 effort to backtrack from the direction that Mr. Lester
17 tried to set us on and some of the conclusions or
18 recommendations that he made as to what some of these
19 claims, particularly the ones that Ms. Curtis is
20 attempting to bring forward in summary judgment, are
21 going to actually look like.
22 I think the effort to backtrack from what
23 Mr. Lester was instructed to do/ordered to do and what
24 he did, in retrospect, you have to wonder what was the
25 point of even having done that if the parties, or a

1 party, is now going to try to back away from the impact
2 of what that was done?
3 One of the reasons we thought that
4 mediation, like Mr. Lester suggested that mediation
5 might work, is that the right mediator, he talked to --
6 talked about the idea of using a former judge - I think
7 we talked about that in the courtroom last time - that
8 the right mediator might help to explain, to educate, to
9 unentrench anybody - whether that be me, whether that
10 be Mr. Mendel, whether that be Ms. Bayless, whether that
11 be Ms. Brunsting, Ms. Curtis, whomever. I think Mr.
12 Lester saw the wisdom in mediation. I think we see the
13 wisdom in mediation. But the consternation or the
14 concern at this point, again, is this issue that Ms.
15 Curtis seems to be unwilling to appreciate, adapt,
16 recognize, embrace what Mr. Lester concluded or
17 recommended in his report; and if that's the case, then
18 I wonder if, if spending the money that it takes to go
19 to mediation makes sense.
20 Frankly, Judge, the most interesting thing
21 that I heard Ms. Curtis say was on the issue of
22 attorneys fees and that that doesn't matter to her; and
23 that is exactly part of the point. I think you were in
24 the courtroom, Judge, the last time when Carole
25 Brunsting made a very impassioned plea or explanation to

1 the Court about how Ms. Curtis' pro se status and her,
2 her need to be a lawyer and her failure to appreciate
3 what it costs, what the costs of this lawsuit are, is
4 never going to lead to this being resolved. I may have
5 lost my train of thought there for a second.
6 But the point here, Judge, is there seems
7 to be no accountability on Ms. Curtis' behalf for the
8 amount of money that is being spent in this case.
9 Parties have, in the past, suggested, oh, let's not
10 worry about the attorneys fees because that will all
11 even out at the end of the story when everybody decides
12 to divide by five, the corpus of the trust, and the
13 winning parties or the prevailing parties can --
14 everything can be adjusted through the division of that
15 estate.
16 But, Your Honor, if you look at what Mr.
17 Lester recommended/suggested/reported in his report,
18 there's now the very real possibility that there isn't
19 going to be a divide-by-five scenario because of the
20 no-contest clauses that are recognized as being properly
21 drawn by the Vacek & Freed Law Firm. And if that
22 happens, Judge, then the trust is now spending its own
23 money from those people, whether it be three or four,
24 that are still going to get a portion of the estate, a
25 portion of the trust proceeds when this is all said and

1 done.

2 I'm rambling just a bit only because it's

3 such a circular discussion - is how do we get this case

4 finished, given, given the backtracking from everybody's

5 willingness to vest Mr. Lester with the authority to

6 proceed, and now the one person who doesn't like what he

7 said, after she filed motions for summary judgment that

8 are direct contradiction to the conclusions that he

9 reached. The very constant of having to come down here

10 and respond to those, to those motions for summary

11 judgment, the amount of money that that will waste is

12 insulting, is offensive to the parties.

13 I'd love to come up with a creative idea

14 to create some accountability, perhaps, if it comes in

15 the form of a sanction or perhaps it comes in the form

16 of some kind of bond being posted so that if it turns

17 out that one of the parties who is blowing things up as

18 it were and creating this increased attorneys fees, no

19 longer has an interest in the estate with which we can

20 even that out by the end of the day. Perhaps if Ms.

21 Curtis is ordered to post a bond against her claims or

22 to protect against the ability -- our ability to recover

23 fees from her if, as and when she loses her case,

24 perhaps then we can move forward with additional

25 hearings, additional motions and so forth.

1 Keep in mind, Judge, that it's not
2 simply -- it's not as simple as getting a date for Ms.
3 Curtis' summary judgment motions. There's been no
4 discovery, in terms of depositions done in this case,
5 not the least of which will be depositions from,
6 perhaps, even from the lawyers in the other district
7 court case who drafted the documents that can explain
8 what all went into those documents, what Nelva
9 Brunsting's state of mind was at the time. There's no
10 way to respond to those summary judgment motions right
11 now without the full weight of the discovery process
12 moving forward and all of the money that that's going to
13 cost.
14 So, you wanted my thoughts on what to do
15 and on one hand, you know, I'm still of the belief that
16 mediation with the right mediator should work, but
17 beyond that, I'm also of the opinion that I'm not really
18 sure what the next thing is.
19 THE COURT: Okay. Well, and I appreciate
20 your argument, and I share in many of your concerns. I
21 haven't heard from you, yet, Ms. Bayless.
22 MOTION TO TRANSFER
23 ARGUMENT BY MS. BAYLESS:
24 MS. BAYLESS: No, that's true. Trying to
25 maintain a low profile, it's hard sometimes.

1 But I think that you've heard some things
2 that the risk of going back to the motion to transfer
3 that make it the obvious one - all the cases need to be
4 together so that everything can be resolved at one time.
5 My client desperately wants to get this
6 case settled, but I do not -- I share Mr. Spielman's
7 concerns, and I have some others. I don't know how
8 we're going to find a mediator who is thrilled about pro
9 se parties. Many mediators won't take a case that has
10 pro se parties. So, we have to deal with that issue.
11 You -- maybe he knows one.
12 I will say this: That Mr. Miller, God
13 love him, and I know him well, and he's mediated many
14 cases for me, but he is not the mediator for this case.
15 THE COURT: And I was not considering
16 sending you back to Mr. Miller.
17 MS. BAYLESS: Okay, good.
18 It really, really does cry out for some
19 kind of a resolution. I don't think this suggestion of
20 bond is particularly workable, and it's needed. I mean,
21 there is valuable real estate in this estate that can be
22 used to do whatever sanction-wise, division-wise,
23 whatever he thinks he can prove. We don't have to go
24 outside this case to resolve this case. I mean, we
25 don't have to be making the case more complicated to get

1 the case resolved, in my view.
2 Now there may well be parties who don't
3 want to resolve it, for whatever reason, you know and
4 want to have a trial. I heard Mr. Reed say that and,
5 you know, that it's going to require a Court decision.
6 You know, but frankly, the whole no-contest issue that
7 Mr. Lester raised in his report, and I assume if we
8 don't work out some settlement procedure, we'll be
9 filing responses to his report and dealing with that.
10 The whole no-contest clause violates the
11 Trust Code and the Probate Code in its very language;
12 and frankly, to prosecute a no-contest clause, you have
13 to have a trial. You have to see whether it was filed
14 and there was good cause in the filing and whether the
15 case was prosecuted in good faith.
16 So, you're necessarily, to get to that
17 issue, you're necessarily going to have to have a trial.
18 You could rule all day long that you
19 believe it to be a valid clause not withstanding the
20 fact that its very language violates the Trust Code and
21 the Probate Code -- or the Estates Code, excuse me, but
22 you're still going to have to have a trial about what
23 that means. So, we need some mechanism that doesn't
24 make us have to have a trial.
25 And now we've got two pro se parties, and

1 I just don't know a strong mediator that is going to
2 deal with two pro se parties. Maybe there is one, but
3 it is going to require someone strong if you go that
4 route.
5 If Ms. Curtis is saying she's absolutely
6 not going to go, I mean, I don't know what we do about
7 that. And for all I know, Carole Brunsting may say
8 she's not going to go. We haven't heard from her
9 either.
10 You know, everybody else maybe could work
11 out a resolution. My client wants very much to resolve
12 the case, but I don't know how you resolve it piecemail
13 when you're talking about a trust that has five
14 beneficiaries. I mean, maybe somebody's smarter than I
15 and could figure that out and you can come up with some
16 kind of a, some kind of a design that says this happens,
17 you know, if X, Y and Z falls into place and it says
18 that. It's very -- it's a very problematic situation,
19 and I don't think, you know, right now we don't even
20 have a personal representative of the estate. So, I
21 don't know how -- I think, frankly, that the district
22 court case, there is some advantage being taken of an
23 unfortunate situation relating to my client's, obviously
24 capacity, unexpected incapacity in deposition. I get
25 that. They're trying to zealously represent their

1 client. But the reality is if they go and dispose of
2 that case without a personal representative when the
3 Court has been notified of that, that is going to come
4 back so fast from the court of appeals.
5 And, you know, they, today, before we came
6 down here, they filed a motion for sanctions. You know,
7 it's all about pressure in that case to maybe make that
8 go away. And I think we sort of see the same problem in
9 this case that, although people try to punch pressure
10 buttons, nobody -- there's no structure, as frustrating
11 as it is for me to say this, there's no structure where
12 everybody is on board. And so, you know, we don't have
13 a way to get these five beneficiaries separated from
14 each other and separated from these courts and on down
15 the road short of forcing someone to do something they
16 don't want to do.
17 These are all strong-willed people. I
18 don't know what happens if you force someone to do
19 something that they don't want to do. You know, maybe
20 they get there and they realize, well, there is some
21 merit to this, but I agree, it's a waste of money if
22 that isn't what happens.
23 And, I mean, I know there's some great
24 mediators in town. We can go to Alice All [sic] to
25 repair it. Maybe she would deal with pro se parties, I

1 don't know but I --

2 THE COURT: Well I want to explore that.

3 You know, in my mind, every puzzle has a solution even

4 if it feels a little bit like a Rubik's Cube, and I

5 think that that's true of this case.

6 I feel like it does need to go back to

7 mediation. I feel like any other direction at this

8 point is, is going to -- it's just not going to advance

9 the ball. This has been dragging on for so long and

10 stalled out for so long, we really need to get it

11 moving. And I feel in my heart that the best way to try

12 to move this forward is to have it go to mediation. We

13 do need a strong mediator. I have someone in mind who I

14 haven't contacted yet, but I wanted to hear from

15 everyone here, first, about their suggestions.

16 You have your hand up, but I want to hear

17 from Carole first.

18 MR. MENDEL: Could I make one quick

19 comment?

20 THE COURT: Uh-huh.

21 STATUS CONFERENCE

22 ARGUMENT BY MR. MENDEL:

23 MR. MENDEL: In fairness to Mr. Miller,

24 the case was probably not right for mediation at early

25 on in the case, but a lot has transpired since then that

1 I think makes it ripe for mediation.
2 I would agree oftentimes that a second
3 mediation could be a waste of time, but not in this
4 case. I think this case screams for a second mediation.
5 THE COURT: I agree.
6 MR. MENDEL: In terms of answering the
7 Court's question - I think it should be a forceful
8 personality; I think it should be a judge. I would like
9 to see Judge Davidson be appointed to serve as the
10 mediator in this case.
11 MR. SPIELMAN: That was actually going to
12 be my suggestion, Judge. I know Judge Davidson would
13 not have an issue with pro se elements in the case. I
14 know, as a judge, he's certainly aware of the dynamics
15 that that brings to the table.
16 I can say that Judge Davidson, having gone
17 to a mediation with Judge Davidson in which I, because
18 of his forcefulness, was forced to completely reevaluate
19 the entire case that we came in there with. I know that
20 he is the type of forceful personality that can
21 unentrench people, that can and will do his own research
22 and bring issues to the table that, perhaps, the parties
23 walking in the mediation haven't even considered yet. I
24 could not more strongly recommend Judge Davidson as
25 being somebody that fits the bill for what this case is

1 needing; and, of course, everybody is welcome to do
2 their due diligence to see the types of cases that he's
3 presided over in the past, to see the docket that he
4 carries now in the multi-district litigations. I would
5 be as flabbergasted as flabbergasted could be if people
6 walked away not thinking that he was the right person to
7 make a try at this.
8 MS. BAYLESS: Just one question, I'm
9 sorry. Just one question.
10 Do you know for sure? I have absolutely
11 no problem with Judge Davidson. I think he's a great
12 resolver of problems, but do you know that he would do
13 a -- have you had a situation where there was a pro se
14 party?
15 MR. SPIELMAN: I'm going to go with I'm 95
16 percent sure, but I'll be happy to make that phone call.
17 MS. BAYLESS: Anyway, that's my only --
18 THE COURT: I know Judge Davidson. And I,
19 you know, similarly, I think that he could probably get
20 the job done quite well. We could contact him and see
21 how he feels about pro se parties.
22 MS. CURTIS: I also have a quick question
23 about mediation.
24 Is there any reason why all of the
25 siblings and their representatives can't be in the same

1 room to talk about it? Because I think that's where it
2 fell down. The mediator came in one room and talked for
3 a few minutes and then went to the next room and then
4 the next room and then came back and told us what these
5 other people said --
6 THE COURT: And that's how mediations
7 often go. The mediator often makes a decision at the
8 beginning of the day about whether he thinks it will be
9 productive or not to bring everyone together. Often,
10 you start out all in the same room. Sometimes, if
11 things are going well, you get back together in the same
12 room towards the end. And I would rely on the mediator
13 to make that call because sometimes the parties are so
14 far apart and antagonistic to one another, that putting
15 them in the room, just escalates things. And so that's
16 what -- that's why, you know, we leave that to the
17 mediator, to kind of make that call. And hopefully, you
18 know, if everybody is civil and can sit around the table
19 and reasonably and constructively discuss the issues,
20 then maybe that's the direction the mediation will go.
21 There's nothing saying that you can't get together.
22 MS. CURTIS: And that's, if we could,
23 then, yes, I would consider mediation; but I can't go
24 through the mediation like we had before.
25 THE COURT: Okay. And, you know, and

1 there's some indication that there are a lot of reasons
2 why that mediation was not successful. And maybe, you
3 know, maybe if you got together for mediation now, your
4 entire family would have a kumbaya experience and find
5 one another. And I know that there is some head-shaking
6 and things, but I need you, and frankly, everyone here,
7 everyone involved in this, needs you to try to keep an
8 open and forgiving mind going into mediation. And I'm
9 not saying that you're going to, you know, walk away and
10 forgive everything that's happened but at least see that
11 there is some benefit to that, to some level of
12 forgiveness going forward, so that you can get this
13 resolved because being here in this building is not
14 helping you. Ultimately, it's not helping anyone
15 involved in this case. And so, that's why I feel that
16 it's, you know -- I need you to go to mediation.
17 It sounds like you're coming around which
18 I'm glad to hear, on some level, because even if you
19 don't come around, I think I'm going to have to get to
20 the point where I order you to go. And, you know, I
21 mean, we don't like ordering people to do things that
22 they don't want to do, but I think that it's in the best
23 interest of everyone to go ahead and get to mediation.
24 If Judge Davidson doesn't pan out, the
25 other name that came to my mind was John Coselli. I

1 hear that he's been doing some very good mediations
2 recently, and I know that he's not -- well, I don't
3 know. I don't think that his focus is probate, but I
4 understand that he's very quick to come up to speed on
5 the issues and has been quite effective in getting
6 things done. So, that's another name that if Mr.
7 Davidson doesn't pan out, we might look at.
8 Let's see...
9 Ms. Brunsting, did you have something you
10 wanted to add?
11 MS. BRUNSTING: Well, I mean, I hear the
12 word "pro se," and it's almost like it's a bad word in
13 this court --
14 THE COURT: It is not a bad word in this
15 court.
16 STATUS CONFERENCE
17 ARGUMENT BY MS. BRUNSTING:
18 MS. BRUNSTING: I've never been through
19 anything like this before. I thought that it was in my
20 best interest to get an attorney. And Darlene Payne
21 Smith, while she's a very, very good attorney, she's a
22 very expensive attorney. I finally just had to make the
23 decision because I don't know if this is going to drag
24 out another month or another 10 years. But I don't want
25 it -- it's upside down, and so I had to just make the

1 decision, as I kind of talked about last year, to try to
2 stop the bleeding. I had to just stop my own bleeding
3 because otherwise what's going to happen is there may
4 not be anything left to divide, but I'm going to end up
5 having to go into my retirement savings to pay this bill
6 now. So, I'm just having to make some life-decisions
7 here. And, unfortunately, one of the things I had to do
8 which is terminate my relationship with Darlene Payne
9 Smith. It's nothing against her, but I just had to make
10 a financial decision on my own because right now I'm
11 faced with this huge bill that I'm going to pay because
12 I try to live my life debt-free. It's going to take me
13 a long time to pay it because I hadn't planned on having
14 this bill.
15 But I guess my other concern is, and I
16 heard some of the other attorneys make it is I feel like
17 what Candy asked for, everybody tries to give to her.
18 And we paid $42,000 for this accounting when we were in
19 Judge Hoyt's [sic] court and that wasn't good enough.
20 And now we've all agreed to Greg Lester, and that's not
21 good enough. And so it just seems like it's going to go
22 on forever, that whatever everybody tries to do to try
23 to make Candy happy, we're always going to just end up
24 straying away from that.
25 And so it's just like I'm hearing with

1 mediation, and I think the rest of us are willing to go
2 to mediation, it's going to be, yes, I'll go to
3 mediation but only if. What if everybody else doesn't
4 agree to that? It is we all agree to go to mediation if
5 we all agree to go sit in the same room, I'm thinking
6 well -- that's why I'm shaking my head. I'm thinking, I
7 doubt that will happen.
8 THE COURT: Well, as I said, you know, we
9 need to leave that up to the mediator because the
10 mediator controls how the mediation proceeds. And, you
11 know, I encourage you to consider that if it looks like
12 it's going to be constructive. She's not putting
13 limitations on the mediation by any stretch of the
14 imagination. We're going to go forward. We're going to
15 go to mediation. We need to find an appropriate
16 mediator, and that's going to happen. So, I want you to
17 feel --
18 MS. BRUNSTING: But in the last mediation,
19 I just felt like everybody was kind of blindsided
20 because I sat in a room for probably three and four
21 hours before -- just waiting and really had no idea what
22 was going to happen. And then somebody comes in -- I
23 mean, a mediator came in and just put a piece of paper
24 in front of me and I go, "What is this?" "Well this is
25 what they want." And, I mean, it was just ridiculous.

1 And then after that, we waited another few hours. And
2 then what we were asked to give up was even bigger than
3 that. And so, it was so ridiculous and I saw no attempt
4 at anybody trying to mediate the system. Nobody knew
5 what was going on.
6 So, I had actually talked to Mr. Lester
7 about before -- I think before anybody's going to agree
8 to mediation, everybody is going to have to be convinced
9 that it's much better organized. The mediator's already
10 talked to everybody to see what the real expectations
11 are because if they're not realistic going in, we're
12 going to be right back where we were before.
13 THE COURT: Okay. Thank you.
14 I want to comment about Mr. Lester. He's
15 here today. He's not, my understanding is, he's not
16 billing for his time today, so we're very grateful that
17 you're here. I asked him to be here in case there are
18 any questions about his report.
19 I think that the accounting that was done
20 previously in the federal court, as well as the report
21 that Mr. Lester provided, is helpful in this case
22 because I think it gives the Court and it gives all the
23 parties some insight into how the claims are viewed by
24 an independent person. And I hope that you'll look at
25 his report and consider his conclusions going forward.

1 I'm not making any rulings about whether
2 his conclusion are right or wrong, but I think they're
3 quite informative. And so I think that it's useful and
4 sort of leading up to mediation.
5 How -- my next concern about mediation is
6 how are we going to pay for it? I know that the parties
7 are motivated to get this resolved, mostly; and in the
8 past, the -- I've always looked to this end of the table
9 to fund things, and I'm not sure that I'm going to do
10 anything different this time.
11 Do you have some opinions about how the
12 mediator should be paid?
13 MR. SPIELMAN: My opinion is simply that
14 the parties should pay the mediator's cost as the
15 parties.
16 Now, again, remember, Judge Comstock, my
17 client and Anita as the current co trustees are actually
18 the only ones who should be having their lawsuit defense
19 financed by the Trust but they have not --
20 MS. CURTIS: Excuse me. Objection.
21 MR. SPIELMAN: Okay.
22 THE COURT: Let him finish, and I'll give
23 you a chance to respond --
24 MS. CURTIS: But this is --
25 THE COURT: I know.

1 MS. CURTIS: -- incorrect information that
2 he's saying.
3 THE COURT: You'll have a chance to
4 respond as soon as he finishes.
5 STATUS CONFERENCE
6 FURTHER ARGUMENT BY MR. SPIELMAN:
7 MR. SPIELMAN: The point, though, Judge,
8 is because I know that there is not an agreement on that
9 point currently, that is why my opinion is each party
10 should pay their own mediation cost.
11 One -- again, I can't make a
12 representation for Judge Davidson, but I suspect, as he
13 has done for mediations in the past, maybe, Ms. Bayless,
14 you've experienced this with him before, I think he will
15 see a way to not necessarily say, you pay a fee; you pay
16 a fee; you pay a fee; you pay a fee and you pay a fee.
17 I think he will probably find some way to structure it
18 by people that have common interests on one side or the
19 other or something like that. We can certainly talk to
20 him about that. I'm happy to talk -- it's my interest
21 to find a way to convince him to charge as little as
22 possible for this as much as it's to the benefit of
23 everybody else here. So, I'm happy to do that.
24 If the Court would like to be the one that
25 reaches out to Judge Davidson to sort of explain a

1 little bit of the back story, maybe that's appropriate
2 that would make people feel more comfortable, we will
3 all have a chance to present our view of the case to
4 Judge Davidson in advance of the mediation because he
5 asks for premediation briefing material, premediation
6 statement. I know he would take phone calls from folks
7 if they would rather handle it that way.
8 I think that all of the issues that are
9 being expressed as concerns about the mediation process,
10 all of them have solutions, and perhaps the attorneys
11 are more aware of this just by the nature of what we do.
12 But particularly with Judge Davidson, he
13 has seen and done it all in his time on the bench. As
14 difficult as this case has been for people particularly
15 on an emotional level, he would have seen this level
16 before, and he will know how to massage everybody's
17 concerns and the law and the facts.
18 Again, I can't say strongly enough -- even
19 if it's not to my client's benefit when it's all said
20 and done, that I think he has the ability to get
21 everybody, you know, on the straight and narrow.
22 STATUS CONFERENCE
23 ARGUMENT BY MS. BAYLESS:
24 MS. BAYLESS: Judge, I agree. The
25 question was how do we pay for it? And I don't see how

1 it makes sense to create another controversy among
2 everybody to not want it, those who don't want it to
3 begin with to think it may be a waste of time. I don't
4 understand why -- I'm not even sure why Mr. Spielman
5 makes this suggestion. I would think that we would have
6 the Trust pay for it, and it can be divided as cost as
7 may need to be part of the settlement just like we dealt
8 with Mr. Lester. I don't know why this is -- that was,
9 frankly, I viewed, anyway, an attempt by the Court to
10 move everything in the direction of trying to work
11 toward a resolution. I don't think the mediation is
12 even more so that way, and I don't know why it's going
13 to be probably less money. I don't know why it should
14 be controversial to deal with it as a cost of getting
15 this case resolved and deal with that and the
16 resolution, but that's just my two cents.
17 THE COURT: Well, I like the suggestion
18 that if Judge Davidson is amenable to that, to let him
19 kind of work that out as part of the mediation, and
20 perhaps that's the route we need to go.
21 Ms. Curtis, you have -- you wanted to
22 speak?
23 STATUS CONFERENCE
24 FURTHER ARGUMENT BY MS. CURTIS:
25 MS. CURTIS: Basically, I just -- people

1 are formulating their opinions by talking to parties in
2 the case, and it's fairly obvious that no one has read
3 everything starting with the original petition in the
4 federal court.
5 I sent my sisters a couple of demand
6 letters after my mother passed away, and I gave them
7 every opportunity to cure and save face. And I told
8 them, "If you don't give me an accounting which has been
9 owed for weeks now," and then I gave them 60 days, that
10 I'd have no alternative, and that I reserve the right to
11 file suit against them.
12 And here we are, almost five years later.
13 Vacek & Freed sold my parents' peace of mind and then
14 betrayed them because my sister, Anita, developed a
15 relationship with Candace Freed. And there is evidence
16 in the record now that shows that. And I'm willing to
17 come to a conclusion, but we can't have all these
18 attorneys. Amy and Anita are on their third attorneys
19 now. And so, how much longer do my brother, Carl, and I
20 have to spend, money, time and emotional stress to get
21 what our parents gave to us to begin with? And that's
22 all they want - not a penny more/not a penny less.
23 THE COURT: Well, often when things get to
24 this point when you're five years down the road in
25 litigation and people are in the positions that you find

1 yourselves today, often what it takes is going to a good
2 mediator and getting everyone in the same room or at
3 least the same building and really looking at the issue,
4 perhaps, with fresh eyes, and finding the reality that
5 there's a better way to resolve this whole game.
6 MS. CURTIS: I want to look at my sisters
7 and my brother in the eye in the same room. I mean,
8 it's just -- I've been able to talk to Carole until she
9 got an attorney and then I couldn't speak to her
10 anymore. I can't talk to Amy and Anita. I tried to
11 call them early on. I just -- this is a family. We
12 don't need these outside people in here paying money for
13 them to draw conclusions when they don't know what's
14 going on. And so I just --
15 THE COURT: And I appreciate your bringing
16 that emotional side of it because I think that's what
17 all of this sometimes comes down to is, the emotions
18 that are involved. And if, you know -- I'm glad that
19 you're saying this here today. All of these attorneys,
20 I'm sure, are hearing you, are hearing your position;
21 and I know that they're aware of the emotions -- the
22 emotional responses from their own clients. And
23 perhaps, perhaps your wish will come true. Perhaps
24 we'll get to mediation, and you'll be able to sit in a
25 room and reach some kind of understanding.

1 I don't have a problem calling Judge
2 Davidson if nobody has a problem with my doing so. So,
3 I'll put a call into him. I know him. He was the scout
4 master of my son's scout troop. So, I'll put a call
5 into him, and we'll see if we can move that piece
6 forward.
7 STATUS CONFERENCE
8 FURTHER ARGUMENT BY MR. MENDEL:
9 MR. MENDELL: I would just like to add,
10 besides Judge Davidson, I don't have any problem with
11 Judge Coselli. I've been in front of Judge Coselli when
12 he was a mediator before he got on the bench. He's
13 excellent.
14 In terms of the fee, I'm open to how the
15 mediator would want to handle it. But the vast majority
16 of mediators, as the Court is aware, expect people to
17 have some sort of an investment, and a great investment
18 is to come out of pocket and pay for it. So, I would
19 oppose that the Trust pays for everybody's pro rata
20 share. Everybody needs to get out their checkbook and
21 pay the mediator regardless of how the fee is
22 structured.
23 THE COURT: Okay. I understand.
24 MS. CURTIS: I can't do that. I work full
25 time. I have no retirement. I have to do without

1 things to come to Houston which I'm more than happy to
2 do, but I don't have extra money to throw away on more
3 wasted time. And that's why I didn't hire an attorney
4 to begin with. My brother shouldn't have had to hire an
5 attorney.
6 THE COURT: Well, Ms. Curtis, Ms. Curtis,
7 please. Therein lies the rub. If this is a waste of
8 time then why are we here? You know --
9 MS. CURTIS: To get resolution.
10 THE COURT: -- we need to move this case
11 forward, and most of the people in this room feel like
12 this is the best way to move it forward.
13 MS. CURTIS: I'd like to move it forward
14 by scheduling the summary judgments.
15 COURT'S RULING
16 THE COURT: Okay. We're going to go to
17 mediation first. And so I'm going to contact Judge
18 Davidson. I'll get information about his fees, and I'll
19 explain the issues and --
20 MS. CURTIS: Okay. I have a personal
21 friend in Houston that I've known for 30 years. He is
22 also a mediator, I understand now; is that a conflict if
23 I suggest that we contact him as well?
24 THE COURT: I don't want to get into what
25 we've had in prior hearings with everyone objecting to

1 people who are suggested. I think that Judge Davidson
2 is a good choice. He's going to be a strong mediator,
3 and I don't want to take lightly the choice of mediator
4 in this case because I don't want to waste your time. I
5 want to get to a mediation with somebody who can make
6 things happen. And I'm not saying that your buddy, your
7 friend, can't make that happen, but I am concerned that
8 there are, you know, you have several siblings who are
9 going to stand up and object for the reasons that I just
10 mentioned. And I know where that's going to go, and I
11 don't think that it's a good idea to go down that road
12 at this point. So, I'm going to call Judge Davidson and
13 see how that will work out.
14 MS. BAYLESS: I just have a question on
15 timing.
16 I'm assuming, and maybe I shouldn't say,
17 that you will be dealing with the motion to transfer
18 first so that that's part of what is being mediated and
19 maybe that's not what you had in mind.
20 I think that there is some merit to having
21 everybody in the room. I recognize Mr. Reed is going to
22 stand up and say he doesn't want to be in the room, but,
23 you know, we need to deal with that. And I think Judge
24 Davidson could deal with all of these issues very well.
25 And if that loose end is left out there, I don't know if

1 it will impact being able to get this case over. I have
2 no -- I don't know.
3 THE COURT: That's a good point. I don't
4 know that we need to transfer the case over here before
5 that happens if we can get some buy-in from the folks
6 involved in the district court case to be a part of that
7 negotiations of the mediation. I don't know whether
8 that's possible, but it seems like if we can get to
9 mediation and get every piece of this resolved, that
10 would be a lot more cost efficient than going through
11 the transfer and getting all of that done.
12 What I'm saying is you guys don't all have
13 to be in this court in order to negotiate a settlement.
14 Do you want to respond to that?
15 MS. BRUNSTING: This is something I spoke
16 with Darlene about is because somehow my brother brought
17 this suit against Vacek is somehow, I think all of us
18 are party to it somehow but without our knowledge, we
19 don't know how this case is going to impact the rest of
20 us and so that's why I spoke with Darlene, and said I'm
21 a bit concerned about going to mediation when I don't
22 know the outcome of this case yet. And so well this
23 case will have some impact on the rest of this. So,
24 that is a valid concern that I have.
25 THE COURT: Mr. Reed, what's your position

1 about participating in a mediation?
2 MR. REED: I think the biggest issue that
3 we have is you or someone has to be appointed or has to
4 appoint someone on behalf of the estate. Right now, if
5 I went to mediation, I would have no one to negotiate
6 with. So, that's the problem by sending a malpractice
7 case is I have, technically, five people I have to deal
8 with that I really need -- I can only really deal with
9 one person that's actually absent right now which is
10 what's delaying the malpractice case from being
11 dismissed.
12 So, I mean, if you send us to mediation,
13 what you're going to have to do is appoint somebody for
14 us to negotiate which means you're actually appointing
15 someone on behalf of the estate. So, that creates to me
16 a big issue that is, again, outside of, really, what we
17 need to deal with today.
18 THE COURT: How do the rest of you -- how
19 do the rest of the attorneys in the room feel about
20 whether we can get to a resolution?
21 MR. MENDEL: I think we can get to a
22 resolution. I mean, if everybody else on this -- in
23 this particular case agrees to an outcome and a
24 resolution for Mr. Reed, then, as I see it, we don't
25 necessarily need to have someone appointed before they

1 come over to the mediation. I mean, if everybody is in
2 agreement then it becomes a moot point.
3 THE COURT: And if you can reach an
4 agreement that a resolution will be reached then you
5 could, perhaps, agree to appoint a temporary
6 administrator who could make decisions on behalf of the
7 estate --
8 MR. SPIELMAN: And that's just the point,
9 Judge. If you backtrack beyond Mr. Lester's
10 appointment, the competing applications before the Court
11 are from my client and from Ms. Curtis. So, if the
12 mediation goes well, those two competing next in line,
13 allegedly executors, can sign off on a deal that would
14 then be able to resolve everything.
15 MR. REED: It's not that the deal can be
16 worked out, it's, at mediation, I have to go to five
17 different rooms to negotiate the deal. So, maybe his
18 client says, okay, I give a million bucks to the
19 estate - that's great; but Ms. Curtis wants $2 million.
20 So, then all of a sudden, I've got to deal with one of
21 the four. Maybe I get four out of the five. And the
22 point is you need one voice for the entire estate, and
23 you're not going to get it with me trying to negotiate
24 with five people at mediation.
25 THE COURT: Well, at some point, all five

1 of those people are going to have to negotiate something
2 to move forward rather it's who's going to be the
3 administrator or the executor going forward. I think
4 that that negotiation is better to take place at the
5 mediation than outside of it.
6 MR. REED: I think the problem you're
7 sending us to mediation with is now we have one extra
8 level, and we already have too many levels of things we
9 need to negotiate. It's going to take almost the entire
10 mediation, if it is successful, to deal with just the
11 sibling issue, and now you're adding the malpractice
12 case on top of that to see if, you know, whether all
13 four or five or one or two agrees with how much money
14 the malpractice case is worth defending at all.
15 So, I think you're adding too much to the
16 puzzle to what's already going to be a difficult
17 mediation.
18 THE COURT: I don't know that the
19 mediation will be successful without that, though. And
20 I think that I kind of like the complication that it
21 has. You know, the more cards on the table, the more
22 you can mix up the deck, am I wrong? It seems like
23 everyone has an interest in going forward. Does anyone
24 disagree with that other than, I'm sorry, Mr. Reed?
25 MS. CURTIS: I don't disagree. And, in

1 fact, it's Candace Freed who drew up these illegitimate
2 papers - whether they were signed or not - she's the one
3 that started this. All five of us have been damaged by
4 what Candace Freed did.
5 I'm happy to let Amy be executor if Neal
6 will represent the executor in this mediation and in the
7 case against Vacek & Freed because it's not
8 malpractice - it's breach of fiduciary. But I just
9 wanted to get it moved along, okay. So, now you've got
10 me convinced that mediation is maybe the way to go, but
11 I don't want any more road blocks for one reason or
12 another.
13 Why can't Amy be executor? No, let Neal
14 take that ball and run with it and we'll all agree.
15 MS. BAYLESS: Well I don't know if my
16 clients will agree to that today, but I don't think we
17 have to do -- I don't think we have to go to that level.
18 If we can reach an agreement, then we know we need a
19 temporary person just for purposes of approving a
20 settlement and, you know, moving forward. I don't
21 think -- I don't see any reason why Judge Davidson can't
22 deal with all of those issues. But if he doesn't deal
23 with all of those issues, I don't think -- I think we
24 run a greater risk of not getting the case resolved.
25 And, frankly, I would think that the law

1 firm would be delighted if the case could get resolved.
2 THE COURT: And I hate for you guys to
3 reach a decision about all of your issues and then have
4 to go to another mediation to resolve all the issues in
5 the district court case, particularly, if, you know, if
6 it's decided that it needs to be grabbed and transferred
7 over here.
8 MR. REED: But it's taking longer, Your
9 Honor, if the case is not settled at mediation. Isn't
10 it somebody is still going to have to be appointed at
11 that point to bring the claims, still, against the
12 malpractice?
13 THE COURT: Which comes first, you know?
14 MR. REED: The point is that Mr. -- you
15 know, if we go back to Mr. Lester's report who already,
16 you know, looked at it, looked at the issues and said
17 the writings were correct, we have the malpractice case
18 that's been pending for three years that no one at this
19 point has been able to prove any evidence of
20 malpractice, whatever the claims would be. So, you're
21 wanting us to go --
22 THE COURT: Well, I'm not sure that Mr.
23 Lester's report says that you win.
24 MR. REED: I'm not saying that, Your
25 Honor. What I'm saying is I think it's going to be too

1 difficult for a malpractice case to be negotiated at a
2 mediation with the five siblings we have here without
3 one voice --
4 MR. MENDEL: I see it that it needs to be
5 a global deal, and if we can't work something out with
6 Vacek & Freed, then the mediation fails. But I'm
7 confident somebody like Judge Davidson can pull this
8 thing together.
9 THE COURT: And I tend to agree. And, you
10 know, I was -- I would hope that you and Ms. Foley would
11 agree to participating in this mediation. And I'm still
12 considering the motion to transfer, but I have to say if
13 you guys are not willing to consider, that encourages me
14 to grant the motion to transfer just to get everything
15 over here so that we can try to get it settled.
16 MR. REED: And I don't want you to have a
17 misvoid [sic] that we're not agreeable to going to
18 mediation. My concern is more if I go to mediation, who
19 am I negotiating with? And the problem is I am being
20 sued -- my client is being sued by the estate. The
21 estate right now doesn't have a representative.
22 So, my concern is, maybe I didn't express
23 it well enough earlier, is not the mediation itself in
24 going - it's who do I negotiate with because I'm dealing
25 with five separate demands because the family can't

1 speak, and I think that's clear. They can't speak at
2 this point as a whole.
3 THE COURT: I understand. And I think
4 that Judge Davidson's qualified. He's capable of seeing
5 the big picture and putting all those pieces together
6 and dealing with that.
7 MS. BAYLESS: And, frankly, Judge, I think
8 I'm going to have to provide the information that Judge
9 Davidson needs about why the claims are filed to begin
10 with. And it doesn't matter how many times you say
11 there is no proof, there is no evidence - the point is,
12 Judge Davidson is going to have to negotiate this thing.
13 There is proof, there is evidence, and I can take the
14 laboring of presenting some kind of summary to him so
15 that he understands the case from its inception and can
16 deal with that case.
17 The idea that, well, there is nobody right
18 now because my client had resigned so there's nobody to
19 deal with this. Let's jump in there and take advantage
20 of it and everything says there is no way to prove this
21 case, there is no way to do that. That's what Judge
22 Davidson will be trying to deal with, and I can provide
23 him with the information and the evidence that does
24 inform him about the case. And it's out there, and they
25 know it's out there. So, we can get past that.

1 I think it a lot more efficiently if they
2 agree to deal with the mediation and everything can be
3 dealt with that way, but I tend to agree - if they can't
4 do that by agreement, then we're right back where we
5 were in this suit about what do we do with that case
6 because that case may very well keep us from resolving
7 this case. Even a non lawyer in the room has said that
8 today. So, you know, I think that's pretty obvious.
9 THE COURT: It sounds to me like everyone
10 except Mr. Reed agrees with that.
11 Do you need to get back with Ms. Foley in
12 order to get me an answer on whether you will
13 voluntarily participate?
14 MR. REED: We'll voluntarily participate.
15 I'm just expressing my concern of why it's not going to
16 be successful.
17 THE COURT: And I appreciate that. And
18 that's a level of, you know, difficulty that I think you
19 will need to bring to the mediation and explain to Judge
20 Davidson and have him address that. So, I mean,
21 everyone has voiced complications today that need to
22 come out on the table and need to be part of the
23 mediation. So, I'm glad that you're all here and
24 voicing those opinions.
25 So, I think we all agree that I'm going to

1 call Judge Davidson. Is there anything else that needs
2 to be discussed today? Is there any -- is there any
3 timing issues that I need to make Judge Davidson aware
4 of?
5 MS. BAYLESS: Well there is a trial
6 setting in May in the district court.
7 MR. MENDEL: I don't think that one is
8 going to stick given the current posture --
9 MS. BAYLESS: Having gone through that
10 argument before, I don't know that I would take that for
11 granted.
12 MR. MENDEL: You're right.
13 MS. BAYLESS: That's pretty much upon us.
14 We're talking. We may not be able to get in to Judge
15 Davidson this month. I don't know what his schedule is
16 but, you know, we're talking about then that does make
17 it a little bit more important the issue of personal
18 representative; in fact, if we're facing that many
19 trials --
20 THE COURT: Okay. Do we need to reset the
21 motion to transfer at this point? In other words, do I
22 need to have another hearing to have to hear from Ms.
23 Foley from that issue?
24 MR. REED: I think you should continue it
25 until after the mediation.

1 THE COURT: And I think I can do that if
2 you guys agree to participate.
3 MR. REED: Again, I think you're
4 misunderstanding what I was saying.
5 THE COURT: No. No. No. I hear what
6 you're saying - I'm just confirming it.
7 MR. REED: Yeah, I hear you loud and
8 clear. And if you would prefer us at mediation, I will
9 be there. I was just expressing to you I think the
10 concerns that convolute the matter even worse, but I
11 hear you loud and clear.
12 MS. BAYLESS: What's the trial date?
13 MR. REED: I think it's the 16th, but I
14 will say this. The Court currently, while we're on the
15 trial docket, I think they recognize that we can't go
16 forward with it because we don't have a personal
17 representative. I don't think that they officially
18 debated it, but I think they somehow called us, I'm
19 expressing this court involved them, Your Honor, but I
20 would say -- well, I'll leave it like that.
21 MR. SPIELMAN: That being said, Judge,
22 probably sooner is probably better than later, you know.
23 THE COURT: Of course. Yeah, I think
24 everyone wants to get this moving.
25 MS. BRUNSTING: Because most of us work.

1 I think each night there's certain meetings that I just
2 can't --
3 THE COURT: Of course. Why I'm not going
4 to get involved with actually scheduling the day; I'm
5 going to contact him. And I just wanted to know if
6 there are any global problems, but I'll leave it to you
7 guys to, you know, to contact him and find a date that's
8 going to work for everyone. I know that you guys all
9 have your emails and share your email addresses. So,
10 I'm hoping that you can work together and find a date
11 that will be convenient for everyone.
12 MS. BAYLESS: Speak of that, I don't know
13 if an order has been signed yet. I've got Ms. Smith's
14 withdrawal, but can we have some information
15 about where to serve her like what address or
16 fax --
17 MS. BRUNSTING: Darlene asked me if it was
18 okay that she send information out, and I said, "Yes,
19 that's okay," but she didn't send it out. I did send it
20 out.
21 THE COURT: Can you send an email to
22 everyone?
23 MS. BRUNSTING: We can talk about it.
24 THE COURT: Including me. I guess you
25 sent me a letter so I got your contact information,

1 correct? It's on your letter? Ms. Brunsting?
2 MR. SPIELMAN: Her address, I think, just
3 to be clear, I think what would be useful to everybody
4 would be if you could just let us know your preferred
5 email address, your preferred phone contact. If you do
6 happen to have access to a fax machine for receiving
7 things, that would work too. I think that that covers
8 most of the ways that we can --
9 THE COURT: And if you could copy me on
10 that as well, that would be helpful. Thank you.
11 Okay. Anything else?
12 MS. BAYLESS: One other thing.
13 I know we held some things, we just held
14 some things while Mr. Lester was doing his thing, and I
15 wonder if it would make some sense to revisit the order
16 that appointed him and the stay provisions and continue
17 those through the mediation date anyway or something or
18 through the next hearing, motion to transfer?
19 THE COURT: What specifically --
20 MS. BAYLESS: It just hit me that we've
21 done that. I'm looking at the order right now.
22 We had talked about it at the hearing that
23 says that the order expires in 90 days. So, I guess --
24 THE COURT: It doesn't sound like to me
25 that everybody is eager to jump out and do some

1 discovery and spend more money prior to going to
2 mediation, am I right? So, let's just focus on getting
3 to mediation unless someone needs something specific in
4 writing.
5 MS. BAYLESS: If I find the order, I'll
6 let --
7 THE COURT: Thank you everybody for being
8 here, particularly Mr. Lester for coming.
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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 $334.00
18 and was paid by Ms. Candace Curtis.
19 WITNESS MY OFFICIAL HAND this the 28th day of
20 March, 2016.
21
22 /s/ Hipolita G. Lopez
HIPOLITA G. LOPEZ, Texas CSR #6298
Expiration Date: 12-31-16
23 Official Court Reporter
Probate Court Number Four
24 Harris County, Texas
201 Caroline, 7th Fl.
25 Houston, Texas 77002