

Living Trust (inter vivos) Created 1996 (see October 15, 2021 Answer [[Tab 37](#)] to the Co-Trustees alleged Counter-claims¹ [[Tab 36](#)] and the attached Addendum [[Tab 38](#)] for Trust History and Nature of the Claims)

(1) Dominant Jurisdiction in the Federal Court

Tort claims relating only to administration of inter vivos trust

Curtis v Brunsting 704 F.3d 406

Probate Court: Pour-over wills filed and approved (unchallenged)

Probate Court: Letters issued for Independent administration (unchallenged)

(2) Related lawsuit filed in the Harris County District Court

(Dominant jurisdiction over state court actions)

Negligence claims against estate planning attorneys relating to illicit changes to decedent's inter vivos trust agreement

Probate Court: Verified Inventory filed and drop orders issued in probate

Containing a used car of very little worth and a

List of claims relating only to administration of the Living Trust

(3) Probate Court: Independent Executor files tort claims

In the probate court

Claims relating only to administration of inter vivos trust,

As ancillary to the pour-over estates no longer pending administration.

¹ Filed 7 years, 8 months, 9 days after the [original suit](#) and 6 years, 8 months, 4 days after their [original answer](#)

At this juncture we have dominant jurisdiction in the federal court by beneficiary and de jure trustee Candace Curtis, involving the same nucleus of operative facts and questions of law as a 2nd case (filed in the Harris County District Court by the independent executor) and a 3rd case (filed in the probate court by the independent executor, involving the same nucleus of operative facts and questions of law as the 1st and 2nd cases.

Independent Administration of a Pour-over to an A/B trust

We have a statutory probate court, independent administration of a pour-over will devised solely to a family trust (an A/B living trust) created more than 20 years earlier.

We have an approved “inventory, appraisal and list of claims” identifying only one item of property subject to in rem claims, an abandoned used car, along with a list of non-probate related tort claims that are merely speculative and relate only to the administration of the sole devisee.

The wills were admitted without challenge and the “inventory, appraisal and list of claims” were approved without challenge. There no debts due to or owing by the estate and the estates were dropped from the active docket.

Five days “after” the inventory appraisal and list of claims had been approved and the estate administration dropped from the active docket, Carl Brunsting filed a tort action in the statutory probate court “Individually and as Independent Executor” for both trust settlors estates. Carl’s action was also filed eight days after expiration of the four years statute of limitations for bringing claims on behalf of the estate of Elmer Brunsting.

If we get beyond jurisdiction and standing issues we have other substantive and procedural legal issues, such as due process, remand, Rooker-Feldman, preliminary injunction, res judicata, collateral estoppel and oh dear oh my! Then there are the substantive issues to address regarding administration of the trust.

Candace Curtis filed her causes of action in the Southern District of Texas under Diversity Jurisdiction February 27, 2012, visited the Fifth Circuit Court of Appeal and obtained a unanimous opinion January 9, 2013 reversing dismissal under the probate exception.

Thereafter Appellant obtained an evidentiary hearing², a preliminary injunction (April 9, 2013) and an accounting of the trust assets assembled by a Special Master (Aug. 2013) appointed because the Defendant Co-Trustees were unable to account.

Carl Brunsting filed malpractice claims against the estate planning attorneys in Harris County District Court January 29, 2013 and filed his causes of action in Harris County Probate Court No.

² [SDTX No. 4:12-cv-592 Dkt 79 – Exhibit 3]

4 on April 9, 2013, the same day as the injunction hearing in the Southern District of Texas.

Due process

There are no findings of fact in evidence as no findings have ever been rendered after an evidentiary hearing.

Co-Trustee Defendants have never provided a full, true and complete accounting for trust assets and never produced a balance sheet showing any division of assets into separate shares.

Despite the stated purposes for Carl's action there has been no declaratory judgment regarding what instruments define "the trust" relationship³.

This is the first step in the direction of remedy. The trust instruments define the obligations of the trustees and the rights of the cestui que, without which, no determinations can be made on breach, negligence, conversion, or fraudulent concealment and there is no foundation for creating constructive trusts. In other words, there has been no substantive remedy for the beneficiaries of the sole devisee of both Settlor's pour-over wills.

That the complete absence of remedy, the complete absence of specific performance by the fiduciary and the over-abundance of attorney's fees and attorney fee demands, can be considered evidence of a civil conspiracy is a proposition too plain to argue.

Local Rules of Harris County Probate Courts

RULE 7: DISMISSAL DOCKETS

7.1 Want of Prosecution. All contested cases which are not set for trial and which have been on file for more than three (3) years are subject to dismissal. Upon request of the court, the court staff shall furnish notice to all parties and their counsel that any contested case will be dismissed for want of prosecution pursuant to the provisions of Rule 165a of the Texas Rules of Civil Procedure. The procedures for notice of dismissal and retention shall be in compliance with Rules 165a and 306a of the Texas Rules of Civil Procedure.

I. Undermine Federal Jurisdiction

THE TENSION BETWEEN COMITY AND FEDERALISM

Whether to Protect Federal Jurisdiction and Effectuate Federal Court Judgments or Engage an Abstention:

³ Tex. Prop. Code § 111.004

“Where the federal case is filed substantially prior to the state case, and significant proceedings have taken place in the federal case, we perceive little, if any, threat to our traditions of comity and federalism. See Moses H. Cone Hosp., 460 U.S. at 21-22, 103 S.Ct. at 940 (fact that substantial proceedings have occurred is a relevant factor to consider in deciding whether to abstain). In fact, by filing a state suit after a federal action has been filed, the state plaintiff can be viewed as attempting to use the state courts to interfere with the jurisdiction of the federal courts. We agree with Royal that if we were to hold that Jackson applied in this scenario, litigants could use Jackson as a sword, rather than a shield, defeating federal jurisdiction merely by filing a state court action. Neither Jackson nor the concerns underlying it mandate such a result.” Royal Ins. Co. of America v. Quinn-L Cap. Corp., 3 F.3d 877, 886 (5th Cir. 1993).

II. The Rooker-Feldman and Probate Exception Doctrines

PROBATE EXCEPTION

The 5th Circuit has already unanimously held subject matter jurisdiction proper in the Southern District of Texas and Candace Curtis cause has been held to be outside the probate exception to federal jurisdiction, *Curtis v Brunsting* 704 F.3d 406 (Jan 9, 2013). The only jurisdictional question is whether or not Carl lacked the capacity to pollute diversity.

ROOKER-FELDMAN

In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291-294 (2005) the United States Supreme Court revisited the Rooker-Feldman doctrine after only applying the doctrine in two previous cases.

Held: the Rooker-Feldman doctrine is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines allowing federal courts to stay or dismiss proceedings in deference to state-court actions.

It is clear from the facts that this case, having been filed in a United States District Court eleven months prior to any “related” state court suits and having been held outside the probate

exception before any state court actions were filed, clearly falls outside the scope of Rooker-Feldman and is thus subject to federal due process review.

THEFT – MISAPPLICATION OF FIDUCIARY ASSETS – SCHEME AND ARTIFICE TO DEPRIVE

The Supreme Court has interpreted the crime of "stealing" to cover all felonious takings with intent to deprive the owner of the rights and benefits of ownership. See *U.S. v. Turley*, 352 U.S. 407, 77 S.Ct. 397, 1 L.Ed.2d 430 (1957).

The Co-Trustees counter-claim message to the beneficiary is that they have sole and absolute control of the money and any beneficiary that files a judicial action to protect their rights and enforce trustee obligations forfeits their rights in the property [ROA 304-311] they are already being deprived of [ROA 31-34]. This scheme and artifice was described in Appellants original federal court petition filed in the Southern District of Texas February 27, 2012, page 20 of 28 [ROA 239] at paragraph 4.

III. Jurisdictional Boundaries and Confusion - within the same court

Attorney Bayless filed Carl Brunsting's tort claims in Harris County Probate Court No. 4 on April 9, 2013 and filed Hannah v Hatcher in August 2013. Dispute over venue in Hannah came down to the question of probate jurisdiction and went to the 14th District Court of Appeals in Houston on a petition for Writ of Mandamus, In re Hannah 431 S.W.3d 801 (Tex. App. 2014)

In opposition to Candace Curtis Bill of Review challenging the probate courts' ruling on jurisdiction, Bayless cites to Lee v. Ronald E. Lee Jr., Katherine Lee Stacy, & Legacy Trust Co. 528 S.W.3d 201 (Tex. App. 2017), also an opinion out of the 14th District Court of Appeals in Houston.

IV. In re Hannah Decided May 13, 2014

In re Hannah 431 S.W.3d 801 (Tex. App. 2014) Court of Appeals of Texas, Houston (14th Dist.).

*For relator's suit to be subject to the jurisdiction and venue provisions of the Texas Estates Code, it must qualify either as a "probate proceeding" or a "matter related to a probate proceeding" as defined*808 by the Estates Code. See, e.g., Tex. Est.Code §§ 32.001(a), 33.002, 33.052, 33.101; see also Tex. Est.Code § 21.006 (stating procedure in Title 2 of the Estates Code "governs all probate proceedings"). Thus, we turn to the definitional provisions of the Estates Code.*

There are 13 cases known to cite to Hannah. Six of those involve independent administration but none cite to Estates Code 402.001 governing independent administration and none involve a pour-over will (devise to living trust).

1. Wallace v. Wallace Decided Oct 9, 2017 No. 05-17-00447-CV Court of Appeals of Texas (5th District) at Dallas (**Independent Executrix**)
2. In re Maxwell Decided Aug 29, 2014 No. 06-14-00067-CV Court of Appeals (6th District) of Texas at Texarkana
3. Hawes v. Peden Decided Dec 16, 2019 No. 06-19-00053-CV Court of Appeals (6th) Appellate District of Texas at Texarkana

Hawes seeks damages against the Peden Estate that would, if awarded, be satisfied from property of the estate. See, e.g., In re Hannah, 431 S.W.3d 801, 809-810 (Tex. App. —Houston [14th Dist.] 2014, orig. proceeding) (because suit sought damages which would be satisfied from defendant's individual assets rather than from estate property, claims were not related to probate proceeding); Narvaez, 564 S.W.3d at 56 (holding that nature of claims and relief sought are to be examined when determining probate court jurisdiction).

Because the petition names Peden's estate as a defendant and seeks damages directly from the estate, the petition is properly classified as a matter related to the probate proceeding. See TEX. ESTATES CODE ANN. § 31.002(a)(6), (c)(1) (matter related to probate proceeding includes disputes over ownership of estate property). As such, the trial court was correct to dismiss the lawsuit because the Harris County Probate Court No. 1 had exclusive jurisdiction over this matter

4. *Mortensen v. Villegas* 630 S.W.3d 355 (Tex. App. 2021) Decided Feb 1, 2021 Court of Appeals of Texas (8th District) El Paso,
5. *Narvaez v. Powell* 564 S.W.3d 49 (Tex. App. 2018) Decided Jul 13, 2018 No. 08-17-00157-CV Court of Appeals of Texas (8th District) El Paso (**Independent Executrix**)

The Court of Appeals focused on the nature of the damages sought, and held that because the suit sought damages which would, if awarded, be satisfied from the defendant's individual assets rather than from any property of the estate, the claims were not related to a probate proceeding. Id. at 809-811. Consequently, it conditionally granted mandamus relief in Hannah's favor 56 We agree with Hannah's conclusion that the nature of the claims and the relief sought must be examined when determining whether the probate court has jurisdiction of a non-probate claim, but the instant case is factually distinguishable because Appellants are not seeking only monetary damages. They are seeking to recover distributions from the estate to the attorneys and to have conveyances of mineral interests to the attorneys declared void. Hannah is also distinguishable because it did not involve an ongoing probate proceeding.

Further, Hannah did not concern an argument that the suit filed in the district court is a probate proceeding as defined in Section 31.001 of Estates Code. For these reasons, we conclude that Hannah is not controlling or dispositive of this case.

6. *Haight v. Koley Jessen PC* Decided Jun 12, 2019 No. 10-18-00057-CV Court of Appeals of Texas (10th District) (**Independent Executor**)

Tina was appointed Independent Executor of Marty's estate.

Tina contends that the present case is a matter related to the Haight probate proceeding because she brought the suit on behalf of herself as well as in her capacity as the Independent Executor of the Estate of Grady Martin Haight.

"We agree with the reasoning in Hannah and Narvaez and find that Tina's legal malpractice claim against Appellees is not a matter related to the probate proceeding as she seeks monetary damages from the Appellees."

7. *In re Perkins* Decided Dec 27, 2017 No. 10-17-00311-CV Court of Appeals of Texas (10th District) (**Independent Executor**)

See Frost Nat. Bank v. Fernandez, 315 S.W.3d 494, 508 (Tex. 2010) (because appellee's claims were not within the jurisdiction of the probate court, Court did not decide whether rule of dominant jurisdiction applies in later-filed direct attacks that are exclusively within the jurisdiction of another court); In re Hannah, 431 S.W.3d 801, 809 n. 3 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (because relator's suit is not related to a probate proceeding, no

need to address whether Estates Code provisions are mandatory or permissive).

8. *In re Davidson* 485 S.W.3d 927 (Tex. App. 2016) Decided Apr 6, 2016 NO. 12-15-00058-CV Court of Appeals (12th District) Tyler, Texas (**Independent Executor**)
9. *In re EOG Res., Inc.* Decided Jun 29, 2018 NO. 12-18-00054-CV CV Court of Appeals (12th District) Tyler, Texas
10. *In re Estate of Puckett* Decided Aug 1, 2019 NO. 12-18-00054-CV CV Court of Appeals (12th District) Tyler, Texas (**Independent Executor**)

For a claim to fall within the statutory county court's probate jurisdiction, it must be either a probate proceeding or a matter related to a probate proceeding as those terms are statutorily defined. See In re Hannah, 431 S.W.3d 801, 807-08 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (per curiam).

11. *In re Phila. Indem. Ins. Co.* Decided May 24, 2017 NO. 12-17-00117-CV Court of Appeals (12th District) Tyler, Texas
12. *In re Rigney Constr. & Dev., LLC* Decided Feb 6, 2018 NO. 12-17-00370-CV Court of Appeals (12th District) Tyler, Texas
13. *In re OSG Ship Mgmt., Inc.* 514 S.W.3d 331 (Tex. App. 2016) Decided Dec 29, 2016 NO. 14-16-00240-CV Court of Appeals State of Texas (14th District)

Mortensen v. Villegas siding with Hannah

Tex. Gov't Code § 25.0021, confines the limited jurisdiction of a statutory probate court to include only four subjects: (probate, guardianship, eminent domain and certain matters under the Health and Safety Code). Of the 13 cases known to cite to *In re Hannah*, only *Mortensen v. Villegas* and *Narvaez v. Powell*, 564 S.W.3d 49 (Tex. App. 2018) cite to Tex. Gov't Code § 25.0021.

Mortensen v. Villegas 630 S.W.3d 355 (Tex. App. 2021) Decided Feb 1, 2021 Court of Appeals of Texas (8th District) El Paso

“2. Applicable Law

The Probate Court No. 1 of El Paso County is a statutory probate court. A

*statutory probate court has the general jurisdiction of a probate court as provided by the Texas Estates Code, and the jurisdiction provided by law for a county court to hear certain matters under the Health and Safety Code. See TEX. GOVT CODE ANN. § 25.0021. It is a court of limited jurisdiction. Narvaez , 564 S.W.3d at 54.*362 For a suit to be subject to the jurisdiction provisions of the Texas Estates Code, it must qualify as either a "probate proceeding," or a "matter related to a probate proceeding," as defined by the Estates Code. In re Hannah , 431 S.W.3d 801, 807-08 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (citing TEX. EST. CODE ANN. §§ 21.006, 32.001(a), 33.002, 33.052, 33.101).”*

There are no cases known to cite to Mortensen. However, the Mortensen Court properly applies statutory construction to the Estates Code provisions at issue and does a very detailed analysis in support of the opinion.

V. Lee v. Ronald E. Lee Jr., Katherine Lee Stacy

Lee v. Ronald E. Lee Jr., Katherine Lee Stacy, & Legac... 528 S.W.3d 201 (Tex. App. 2017) Court of Appeals of Texas, Houston (14th Dist.).

“Our review of the legislative framework for a statutory probate court's jurisdiction shows that the court's trust jurisdiction is independent of its probate jurisdiction.” ID. 212

The Lee Court interprets Estates Codes §§32.006 & 32.007 out of the context of Title II in order to conclude that a statutory probate court's trust jurisdiction is independent of its probate jurisdiction. The Lee Court does not mention Tex. Gov't Code § 25.0021 and of the 19 cases that cite to Lee, none mention Tex. Gov't Code 25.0021, the statute that defines the limits to the jurisdiction granted to a statutory probate court.

A. Standard of Review

In reviewing the trial court's sanction orders, we "must independently review the entire record to determine whether the trial court abused its discretion." Am. Flood Research, Inc. v. Jones, 192 S.W.3d 581, 583 (Tex. 2006); Sims v. Fitzpatrick, 288 S.W.3d 93, 105 (Tex. App.—Houston [1st Dist.] 17 2009, no pet.).

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1. Barton Food Mart, Inc. v. Botrie NO. 03-17-00292-CV Decided Oct 25, 2018 Court of Appeals of Texas, (3rd) District, at Austin
2. Gordon v. Nickerson NO. 03-18-00228-CV Court of Appeals of Texas, (3rd) District, Austin Decided May 17, 2019
3. Goepp v. Comerica Bank & Trust, N.A. Decided Jul 9, 2021, No. 03-19-00485-CV Court of Appeals of Texas, (3rd) District, Austin

*In her fourth issue, Heidi asserts that the "trust matter is not 'incident to or ancillary to' any pending estate matter in probate court." Heidi argues that [section 115.001\(d\) of the Texas Property Code](#) "is limited to matters 'incident to an estate' and apply only when a probate proceeding relating to such estate is actually 'pending' in the probate court," citing [Baker v. Baker, No. 02-18-00051-CV, 2018 WL 4224843, at *1-2](#) (Tex. App.—Fort Worth Sept. 6, 2018, no pet.)*

(mem. op.), and that "[t]o trigger a statutory probate court's exclusive subject-matter jurisdiction over a cause 'related to the probate proceeding,' a probate proceeding must be pending." But Baker concerned a statutory probate court's jurisdiction under [section 32.005 of the Texas Estates Code](#), not [section 32.006](#), and is therefore not applicable here.

See id. (citing [Tex. Est. Code § 32.005\(a\)](#) (providing statutory probate court with "exclusive jurisdiction of all probate proceedings" and related causes of action unless its jurisdiction "is concurrent with the jurisdiction" of "any other

court")). [Section 32.006](#) concerns a statutory probate court's independent jurisdiction, not its jurisdiction over causes related to the probate proceeding. See [Lee v. Lee, 528 S.W.3d 201, 213](#) (Tex. App.—Houston [14th Dist.] 2017, pet.

denied) ("Our conclusion that a statutory probate court has jurisdiction over 'an action involving an inter vivos trust, testamentary trust, or charitable trust' as unambiguously stated in [Texas Estates Code section 32.006](#), is unaffected by

the authorities Susan cites concerning proceedings 'appertaining to or incident to an estate.' The authorities on which Susan relies deal with conditions in which a court exercising original probate jurisdiction can exercise jurisdiction over

related or ancillary matters; they do not address a statutory probate court's independent jurisdiction over trust actions.").

4. In re O.M. Decided Aug 17, 2020 No. 05-19-00909-CV Court of Appeals of Texas (5th District) at Dallas
5. In re O.M. Decided Aug 17, 2020 No. 05-19-00909-CV Court of Appeals of Texas (5th

District) at Dallas

6. Antolik v. Antolik 625 S.W.3d 530 (Tex. App. 2021) Decided May 7, 2021 Court of Appeals of Texas, (6th) Appellate District, Texarkana

"A judgment is void ... 'when it is apparent that the court rendering judgment had no jurisdiction [over] the parties....' " In re D.S. , 602 S.W.3d 504, 512 (Tex. 2020). Although we do not have jurisdiction "to address the merits of appeals from void orders or judgments," we do "have jurisdiction ... to determine" whether an "order or judgment underlying the appeal is void and make appropriate orders based on that determination." Freedom Commc'ns, Inc. v. Coronado , 372 S.W.3d 621, 623 (Tex. 2012) (per curiam). The entirety of this appeal is, therefore, not moot as appellees suggest. See id. ; see also Lee v. Lee , 528 S.W.3d 201, 209 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (appeal is not moot when the parties continue to have live controversy for which appellate relief is potentially available).

7. Samson Expl., LLC v. Hooks Decided Sep 17, 2020 NO. 09-18-00390-CV Court of Appeals of Texas (9th District) at Beaumont
8. Schauble v. Schauble Decided Jul 21, 2022 No. 11-20-00181-CV Court of Appeals of Texas, (11th District) (Independent Executor)
9. Sims v. Thomas 584 S.W.3d 880 (Tex. App. 2019) Decided Aug 20, 2019 No. 11-20-00181-CV Court of Appeals of Texas, (11th District)
10. Curtis v. Baker NO. 14-17-00859-CV Decided Dec 20, 2018 Court of Appeals of Texas, Houston (14th Dist.)
11. Estate Land Co. v. Wiese 546 S.W.3d 322 (Tex. App. 2017) Decided Dec 21, 2017 NO. 14-16-00040-CV Court of Appeals of Texas, Houston (14th Dist.)
12. In re Amegy Bank 650 S.W.3d 842 (Tex. App. 2022) Decided May 10, 2022 No. 14-21-00499-CV Court of Appeals of Texas, Houston (14th Dist.)
13. In re Estate of Larson 541 S.W.3d 368 (Tex. App. 2017) Decided Dec 7, 2017 NO. 14-16-00587-CV Court of Appeals of Texas, (14th Dist.) Houston (Independent Executor)

The Lawyers further argue that the Probate Court could properly authorize the payment of their fees because the Estates Code grants the court exclusive jurisdiction over probate proceedings, as well as pendant and ancillary jurisdiction as necessary for judicial efficiency. See Tex. Est. Code §§ 31.001 - .002, 32.001-.002; see also Lee v. Lee , 528 S.W.3d 201, 212 (Tex. App.—Houston [14th Dist.] 2017, pet. filed) (discussing jurisdiction of statutory probate courts).

14. Izen v. Ryals Decided Apr 18, 2019 NO. 14-17-00431-CV Court of Appeals of Texas, (14th Dist.) Houston
15. Mahon v. Spaulding Decided Mar 21, 2019 NO. 14-18-00383-CV Court of Appeals of Texas, (14th Dist.) Houston
16. Said v. Sugar Creek Country Club, Inc. Decided Aug 31, 2018 NO. 14-17-00079-CV Court of Appeals of Texas, (14th Dist.) Houston

UNDUE INFLUENCE

VI. TRUST ELEMENTS

by examining the nature of the claims, the rights asserted and the relief sought in the context of Tex. Est. Code § 31.001, the statute that defines "probate proceeding" and in the context of Texas Estates Code § 31.002(c), the statute that defines "matters related to a probate proceeding". The lion's shares of the remaining assets are in the Elmer H. Brunsting irrevocable trust and Carl's April 9, 2013 petition *[ROA 5-24]* missed the four year statute of limitations for bringing claims on behalf of Elmer's estate by eight days.⁴ There has never been a full, true and complete accounting performed and defendant Co-Trustees have never produced a balance sheet. See comments of Candice Schwager and Carole Brunsting at hearing on Carole Brunsting's emergency motion for trust distribution. *[Reporters Record Vol 1 of 3]* Mortensen v. Villegas 630

⁴ [FDCA No. 10-22-00513-CV- Tab 13] Statement of Death and other facts by Drina Brunsting

S.W.3d 355 (Tex. App. 2021).⁵ I initially thought the issues were pretty straight forward but due to the number of factors that must be considered it becomes exponentially more complex the more one looks at it. What is not in the record is as relevant as what is.

The nature of the claims, the rights asserted and the relief sought in Carl Brunsting's original April 9, 2013 petition, do not qualify as a "probate proceeding," or "matter related to a probate proceeding" as those terms are defined by the Texas Estates Code.

⁵ Mortensen v. Villegas is an in depth judicial analysis of In re Hannah 431 S.W.3d 801 (Tex. App. 2014).