

TAB 33

CANDACE LOUISE CURTIS	§	
Plaintiff,	§	Harris County Probate No. 4 No 412,249-402
v	§	Federal Civil Action No. 4:12-cv-00592
Anita Kay Brunsting,	§	
Amy Ruth Brunsting,	§	
Does 1-100	§	
Defendants.	§	

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CARL HENRY BRUNSTING	§	
Individually and as independent executor	§	Harris County Probate No. 4
of the estates of Elmer H.	§	No 412,249-401
Brunsting and Nelva E. Brunsting	§	
	§	
vs	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E.	§	
Brunsting, and as Successor Trustee of	§	
the Brunsting Family Living Trust, the	§	
Elmer H. Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust, the	§	
Carl Henry Brunsting Personal Asset	§	
Trust, and	§	
the Anita Kay Brunsting Personal	§	
Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a AMY	§	
RUTH TSCHIRHART, individually and	§	
as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the Nelva E.	§	
Brunsting Survivor's Trust the Carl	§	
Henry Brunsting Personal Asset Trust,	§	
and the Amy Ruth Tschirhart Personal	§	
Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
individually and as Trustee of the	§	
Carole Ann Brunsting Personal	§	
Asset Trust; and Candace Louise Curtis	§	
as Nominal Defendant Only	§	
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Plea to the Jurisdiction

1. Comes now Real Party in Interest, Candace Louise Curtis, herein respectfully moving this Honorable Court for an Order dismissing the above-titled and numbered action for want of subject matter jurisdiction.
2. This Court is without authority to determine the subject in controversy because Plaintiff's Petition does not show on its face that the Court has subject matter jurisdiction. Quite the contrary.
3. Bayless' complaint in 412,249-401, filed April 9, 2013, declares the jurisdiction for Plaintiff's cause of action to be Chapter 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.
4. Bayless also cites to the venue provisions in Texas Civil Practices & Remedies Code §15.002(a)(1).
5. Bayless goes on to state that the purpose for the claims are to:
 - (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
 - (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
 - (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;

- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

Probate Proceedings

6. As of January 1, 2014, the former Texas Probate Code has been repealed and replaced with the Texas Estates Code. See *In re Estate of Aguilar*, No. 04–13–00038–CV, 2014 WL 667516, * 1 n. 1 (Tex.App.-San Antonio Feb. 19, 2014, pet. filed) (mem.op.); *In re Estate of Dixon*, No. 14–12–01052–CV, 2014 WL 261020, *1 n. 1 (Tex.App.-Houston [14th Dist.] Jan. 23.2014, pet. filed). All citations herein will be to the Texas Estates Code.
7. For Bayless’ 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 by the Estates Code. See, e.g., Tex. Est.Code §§ 32.001(a)¹, 33.002, 33.052, 33.101; see also Tex. Est.Code § 21.006 (stating procedure in Title 2 of the Estates Code “governs

¹See Tex. Est.Code §§32.001(a) (“All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.” (emphasis added)), 33.002 (providing that with one exception not relevant here, “venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending”

all probate proceedings”). Thus, we turn to the definitional provisions of the Estates Code.²

8. Tex. Est.Code § 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE. The term "probate proceeding," as used in this code, includes:

- (1) the probate of a will, with or without administration of the estate;
- (2) the issuance of letters testamentary and of administration;
- (3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;
- (4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;
- (5) a claim arising from an estate administration and any action brought on the claim;
- (6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and
- (7) a will construction suit.

9. It is clear from this list that none of Bayless’ claims fall within the provisions of § 31.001 and thus, by definition, are not probate matters.

² See also Tex. Est.Code § 22.029 (“The terms ‘probate matter,’ ‘probate proceedings,’ ‘proceedings in probate,’ and ‘proceedings for probate’ are synonymous and include a matter or proceeding relating to a decedent's estate.”). Tex. Est.Code § 22.012: “estate” means a decedent's property...”

Matters Related to Probate Proceedings

10. The Estates Code includes a distinct definition of “a matter related to a probate proceeding,” see Tex. Est.Code § 31.002, and has jurisdiction and venue provisions specific to such matters, see, e.g., Tex. Est.Code § 32.001(a), 33.002.
11. Tex. Est.Code § 31.002(a), (b) & (c) “A matter related to a probate proceeding” is defined based on whether a county has a statutory probate court or county court at law exercising probate jurisdiction.³
12. Tex. Est.Code § 31.002 MATTERS RELATED TO PROBATE PROCEEDING. (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
 - (1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;
 - (2) an action against a surety of a personal representative or former personal representative;
 - (3) a claim brought by a personal representative on behalf of an estate;
 - (4) an action brought against a personal representative in the representative's capacity as personal representative;
 - (5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property;
 - (6) an action for trial of the right of property that is estate property;

³ IN RE: Julie HANNAH Court of Appeals of Texas, Houston (14th Dist.) No. 14–14–00126–CV.
Decided: May 13, 2014

- (7) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
 - (8) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.
13. Tex. Est.Code § 31.002 (b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
- (1) All matters and actions described in Subsection (a);
 - (2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
 - (3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.
14. Tex. Est.Code § 31.002 (c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
- (1) All matters and actions described in Subsections (a) and (b); and
 - (2) Any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.
- Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec.13(a), eff. January 1, 2014.*
15. Respondents will likely argue that § 31.002(a)(8) and § 31.002(b)(3) apply because the matter before the Court involves the interpretation and administration of an inter vivos trust created by a decedent whose will has

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this 19th day of October 2018.

//s//

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