Independent Administration?

Pour-over into inter vivos trust?

Plaintiff with Standing?

If we use Estates Code Section 32.006 to establish subject matter jurisdiction in a statutory probate court, what other estates codes apply to this controversy?

Once the estate pours over, all right title and interest vests in the sole devisee and become trust business. An “estate” is a legal fiction defined as personal property. What legally tangible interest does the “estate” have in the outcome of this trust controversy other than that of a nominal plaintiff?

## Was there ever a -401?

 Was Carl ever competent to occupy the office of Independent Executor?

### STANDING

1. Carl is not a devisee and never had individual standing in the probate of the estate of Nelva Brunsting.
2. After the recording of the Decedents Will and the filing of the verified inventory the Decedents Will foreclosed the independent executor from taking any further action in the probate court.
3. After the probate court approved the verified inventory, the independent executor was also foreclosed by statute from taking any further action in the probate court. **Tex. Est. Code § 402.001.**

## Was there ever a Remand?

 There was never a removal and there could be no return.

## Was there ever a transfer?

 There is no authority for a state court to transfer a federal case to itself

## Was there ever a consolidation?

2015-03-16 [Tab 46](http://www.probatemafia.com/Brunsting/TAB%2046%20%202015-02-09%20Docket%20sheet%20412249-402%20Certified%202019-08-22.pdf) Docket -402 Certified “Order to Consolidate” ordering that all pleadings filed under 412,249-402 be moved into 412,249-401 and that -402 be closed to further filing (There is no evidence that anything was actually moved or copied into -401.)

There was no executor or personal representative for estate of Nelva Brunsting on March 16, 2015. Drina could not legitimately stand in for Carl in either capacity.

The federal case, “*Candace Louise Curtis vs Anita Brunsting et al. No. 4:12-cv-592*” is not the *estate of Nelva Brunsting*. There was never an “estate of Nelva Brunsting -402”. Where are the motions and when was the hearing?

Who was representing Estate of Nelva Brunsting on March 16, 2015 when this “Agreed Order” was signed?

## Was the federal action ever refiled in the probate court?

 It could never have been filed in the probate court without a pending estate administration to be ancillary to.

Wasn’t the state District Court lawsuit the same as the state probate lawsuit and require determination as to what change instruments are valid ?

## Was there really a summary judgment?

There was never an evidentiary hearing.

 The record is devoid of any findings of fact or conclusions of law

No documents were qualified by witness testimony

No declaratory judgments have ever entered and thus, the issue identified by George Vie III at the preliminary injunction hearing April 9, 2013 (P. 38, ln.20-23)

All of the facts remain in dispute except the admissions filed with their original March 1, 2013 answer and the fiduciary disclosures received from Defendants in the SDTX that Defendant Appellees now call hearsay. (See [Transcript of Injunction hearing](http://www.probatemafia.com/Brunsting/Tab%203%202013-04-09%20Case%20%204-12-cv-592%20Injunction%20Hearing%20Transcript-Certified.pdf))

## Were there really any counter claims?

Original Suit filed Feb. 27, 2012 – Defendants Original Answer filed March 1, 2013 – Defendant’s Original Counter Claims filed November 4, 2019

1. Counter claims are compulsory, Tex. R. Civ. P. 97(a), and waived when not brought with an original answer
2. Defendant Appellee Anita Brunsting and Amy Brunsting filed their original answer in the SDTX on March 1, 2013.
3. Defendant Appellee’s Anita Brunsting and Amy Brunsting filed their “original counter claims” in Harris County Probate Court No. 4 on November 4, 2019. (6 yrs. 8 Mo’s)

## Was there a Severance?

March 11, 2022 an Order Granting Motion to Sever Carl from Candace Curtis was entered, creating ancillary cause No. 412,249-405 as a place for Drina Brunsting and the Defendant Co-Trustees to move their no longer being prosecuted tort claims. ***[ROA 321-326]***

Whether or not the order to sever is valid is dependent upon the validity of the remand, transfer and consolidation orders. ***[ROA 327-329]***

## Preliminary Injunction

According to the honorable Judge Stone, the preliminary injunction issued in response to federal Plaintiff Candace Curtis remains in full force and effect. To what Court would the Defendant Co-Trustee/Appellees turn for permission to perform acts prohibited by the federal court without court approval?

## What was the effect of Non-suit?

March 18, 2022, Drina filed a Notice of Nonsuit of Defendant Carole Brunsting and visa-versa. March 18, 2022, Drina also filed a Notice of Nonsuit of nominal Defendant Candace Curtis. Assuming Carl had individual standing (or that Drina had standing at all), as of March 18, 2022 there is officially no dispute between Carl and Candace and no evidence that there ever was.

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 642 (Tex. 2005); Bd. of Adjustment of San Antonio v. Wende, 92 S.W.3d 424, 427 (Tex. 2002); Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001).

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings. See In re Kellogg Brown & Root, Inc., 166 S.W.3d 732, 737 (Tex. 2005). Appellate courts lack jurisdiction over moot controversies. See Olley v. HCM, LLC, 449 S.W.3d 572, 575 (Tex. App.-Houston [14th Dist.] 2014, pet. denied).

A case becomes moot if a controversy ceases to exist between the parties. Candace never sued Carl and was merely a nominal defendant in Carl’s suit. Carl made it clear that he had no claims against Candace on March 18, 2021 when he filed a non-suit. If Carl does not have interests adverse to Candace interests how does Carl have Appellee standing?

# Pattern showing Collusion

## 2015-01-09 the Mendel Law Firm makes note of Problems with the Remand

02-12 Exhibit q Anita’s (Mendel) attorney Fee Disclosure

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“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”

## 2015-02-17 Carl submits resignation

Carl resigned the office of independent executor in February 2015, leaving the office vacant. Carl substitutes his wife Drina but Carl is not a devisee of the trust and has no standing in probate. Carl is a beneficiary of the sole devisee but what is the standing of an interested person.

## 2013-02-20 Agreed Docket control Order

Summary Judgment August 3, 2015 and Trial in September 2015

Who was representing the estate when this agreed order was signed?

## 2015-03-16 Agreed Order to Consolidate

 Who was representing the estate when this agreed order was signed?

## Stephen Mendel: Anita threatens Carl with IME & Guardianship

May 19, 2015 There is a note in Neal Spielman’s billing records (counsel for Amy Brunsting) regarding Defendant Anita Brunsting threatening Carl with a motion to compel IME to determine whether an action for guardianship against Carl would be necessary.

02-15 Exhibit R Amy’s (Spielman) attorney fee disclosures

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“5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with

IME for Carl to assist in determination of whether guardian is needed for

Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor.”

## 2015-05-29 Bayless agrees not to prosecute Carl’s claims in exchange for no IME or Guardianship action against Carl!

“5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing”

On June 26, 2015 Defendants' new attorneys in Probate Court No.4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that their alleged 8/25/2010 QBD is invalid.

2015-07-13 Case 412249-401 PBT-2015-226432 Defendants counsel and Bayless file Notice of hearing on No Evidence Motion 2015-07-13 and motions for summary judgment for August 3, 2015

## 2015-07-13 Case 412249-401 Curtis Response to No-evidence motion PBT-2015-227757

 Curtis answers, objecting to assuming facts, and demanding production and witness testimony qualifying three alleged originals as evidence.

On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings which were received by Plaintiff Curtis via certified mail with signature required.

July 7, 2015 Carl Brunsting (Drina) filed a Motion for Protective Order regarding the illegally obtained wiretap recordings.

July 9, 2015 Carl Brunsting (Drina) filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion.

Unsworn testimony of an attorney is not evidence

## 2021-12-06 Rule 11 Agreement

There have been no evidentiary hearings and no declaratory judgment entered. After four and one half years Bayless, Mendel and Spielman disclose their 2015 agreement not to prosecute their claims against one another.

“1. Plaintiff Carl Brunsting requests that the Court **not** rule on the portion of his July 9, 2015 motion for partial summary judgment, which relates to the issue of:

Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who received benefits from those distributions are also liable pursuant to TEX. PROP. CODE §114.031, including through an offset of the applicable beneficiary’s liability against that beneficiary’s remaining interest in the trust estate.

2. Defendant & Co-Trustee Anita Brunsting and Defendant & Co-Trustee Amy Brunsting request that the Court **not** rule on any portion of the Co-Trustees Motion for Summary Judgment, filed on November 5, 2021, to the extent that the motion relates in whole or in part to Plaintiff Carl Brunsting. Rather, the Court should construe the motion for summary judgment as filed solely against Candace Louise Curtis.”

## Is Appellee Bayless Answer Moot?

In general a case becomes moot "`when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" United States Parole Comm'n v. Geraghty, [445 U.S. 388, 396](https://casetext.com/case/united-states-parole-commission-v-geraghty#p396) (1980), quoting Powell v. McCormack, [395 U.S. 486, 496](https://casetext.com/case/powell-v-cormack#p496) (1969). It would seem clear that under this general rule Hunt's claim to pretrial bail was moot once he was convicted. The question was no longer live because even a favorable decision on it would not have entitled Hunt to bail. For the same reason, Hunt no longer had a legally cognizable interest in the result in this case. He had not prayed for damages nor had he sought to represent a class of pretrial detainees.

For a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal. See United States v. Munsingwear, Inc., [340 U.S. 36, 39](https://casetext.com/case/united-states-v-munsingwear-2#p39) (1950). If a controversy ceases to exist — "the issues presented are no longer `live' or the parties lack a legally cognizable interest in the outcome" — the case becomes moot. Murphy v. Hunt, [455 U.S. 478, 481](https://casetext.com/case/murphy-v-hunt#p481) (1982); see also O'Shea v. Littleton, [414 U.S. 488, 495-96](https://casetext.com/case/oshea-v-littleton#p495) (1974)

Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits; the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.

The full faith and credit clause, seems to forbid collateral attack in civil cases

Civil litigants do not lose their separate identity when their case is consolidated with another.

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100* is not *ESTATE OF NELVA BRUNSTING*

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (Curtis v Brunsting)* is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

*ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlors that created the family trust which, is the sole devisee of both decedents’ wills.

Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.

There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

## DUE PROCESS

A trust is defined by an indenture. The indenture defines a relationship between a trustee (a fiduciary) and a beneficiary (cestui que) in regard to the property (Corpus) held in trust. After ten years, Appellee’s cannot produce a declaratory judgment or even a transcript of a substantive hearing in which a discussion was had and determinations were made regarding which instruments are being referred to when we say “The Trust”.

After ten years Appellee’s cannot produce, for the court’s review, even one substantive hearing in which sworn testimony was taken in evidence.

After ten years Appellee’s cannot describe even one benefit enjoyed by the beneficiaries of this trust including their own clients but Appellant can provide evidence that the attorneys expect hundreds of thousands of dollars and that hundreds of thousands of dollars in losses have occurred in the ten years this trust has been held hostage.

## Boundaries of Order

Does not lose separate identity

litigants do not lose their separate identity when their case is consolidated

## CONSOLIDATION

*HONG KONG DEV v. NGUYEN*, No. 01-04-00586-CV, at \*1 (Tex. App. Nov. 9, 2006) (“Two types of consolidation exist: true consolidation and consolidation for trial. McDonald Carlson, *supra,* at 775; *see also* 7 Dorsaneo, *supra,* at § 112.01[1][a]. True consolidation, as occurred here, involves merging separate suits into a single proceeding under one docket number. McDonald Carlson, *supra,* at 775. "`When actions are properly consolidated they become merged and are thereafter treated as one suit. . . .'" *Perry v. Del Rio,* [53 S.W.3d 818, 825](https://casetext.com/case/perry-v-del-rio#p825) n. 6 (Tex.App.-Austin 2001) (quoting 1 Tex. Jur. 3d *Actions* § 77 (1993)), *pet. dism'd,* [66 S.W.3d 239](https://casetext.com/case/perry-v-del-rio-2) (Tex. 2001); *see Rust v. Tex. Pac. Ry. Co.,* [107 Tex. 385, 387](https://casetext.com/case/rust-v-texas-pacific-railway-company#p387), [180 S.W. 95, 95](https://casetext.com/case/rust-v-texas-pacific-railway-company#p95) (1915) ("In the present case, the order of consolidation having been properly made, there remained no separable cause of action. It became but one suit. . . ."). Therefore, when a court orders true consolidation of two or more cases, the actions are merged and thereafter proceed as a single action, as though they had been filed initially as a single suit. *See Perry,* [53 S.W.3d at 825](https://casetext.com/case/perry-v-del-rio#p825) n. 6; *Rust,* [107 Tex. at 387](https://casetext.com/case/rust-v-texas-pacific-railway-company#p387), [180 S.W. at 95](https://casetext.com/case/rust-v-texas-pacific-railway-company#p95); McDonald Carlson, *supra,* at 775. ”)

## SEVERANCE

Rule 41 of the Texas Rules of Civil Procedure states that “[a]ny claim against a party may be severed and proceeded with separately.” [Tex.R. Civ. P. 41](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-3-parties-to-suits/rule-41-misjoinder-or-non-joinder-of-parties). **The effect of a severance is to divide a lawsuit into two or more independent suits that will be adjudicated by distinct and separate judgments.** *See Van Dyke v. Boswell, O'Toole, Davis & Pickering,* [697 S.W.2d 381, 383](https://casetext.com/case/van-dyke-v-boswell-otoole-davis-pickering#p383) (Tex.1985); *see also Beckham Grp., P.C. v. Snyder,* [315 S.W.3d 244, 245](https://casetext.com/case/beckham-group-v-snyder#p245) (Tex.App.-Dallas 2010, no pet.). The controlling reasons for a severance are to effect justice, avoid prejudice, and for convenience. *See F.F.P. Oper. Partners v. Duenez,* [237 S.W.3d 680, 693](https://casetext.com/case/ffp-operating-v-duenez#p693) (Tex.2007); *Guaranty Fed. Savs. Bank v. Horseshoe Operating Co.,* [793 S.W.2d 652, 658](https://casetext.com/case/guar-federal-sav-bank-v-horseshoe-operating-co#p658) (Tex.1990).