NO. 412,249-401

CARL HENRY BRUNSTING, § IN PROBATE COURT

INDIVIDUALLY AND AS §

INDEPENDENT EXECUTOR OF THE §

ESTATES OF ELMER H. BRUNSTING §

AND NELVA E. BRUNSTING § NUMBER FOUR (4)

§

vs. §

§

ANITA KAY BRUNSTING f/k/a § HARRIS COUNTY, TEXAS

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 as a nominal defendant only, §

CANDACE LOUISE CURTIS §

## Notice of Special Appearance; Motion to Dismiss for want of Jurisdiction and to Set Aside Order Granting Distributions to pay Attorney Fee Creditors

1. Pro se Andrew Curtis, appearing specially and not generally, herein challenges the subject matter jurisdiction of this court to hear or determine any matter related to the Brunsting Family Living Trust.

# STANDING

1. Movant is an “interested person” within the meaning of Texas Property Code Section 111.004(7). Family Living Trust settlors Elmer H. Brunsting and Nelva E. Brunsting were my grandparents and my interests as a successor beneficiary are protected under the terms of the unsoiled Brunsting Family Living Trust which includes only the **2005 Restatement as amended in 2007**. My mother, Candace Curtis is the lawful trustee.

# Definitions

Given the fact that these attorneys have a penchant for misnomers in their abuse of legal terminology, including the proper case title and trust naming convention, it seems necessary at onset to clarify a few critical distinctions in legal terms that are necessary in order to differentiate this from that. “Things that are similar are not the same”.[[1]](#footnote-1)

NAME

**Article I Section B. The Title of Our Trust**

Although the name we have given to our trust for our own convenience is the BRUNSTING

FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring

assets into the trust, holding title to assets and conducting business for and on behalf of the

trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,

Trustees, or the successor Trustees, under the BRUNSTING

FAMILY LIVING TRUST dated October 10, 1996, as amended.

## Estate

1. There is no such thing as a trust estate and there is no such thing as an estate beneficiary. An Estate, for probate purposes, is defined as personal property that was abandoned by a decedent at the moment of passing. Probate is an action in rem wherein the estate is impugned as the defendant and all probate related “claims” are either assertions of rights to a portion of the estate or, allegations of a sum certain owed to the decedent by third parties that are alleged to be part of the decedents estate. The real parties in interest to a probate estate are called heirs.

## Trust

Trust is both a noun and a verb but only in the following context can both the noun and verb be defined as concurrent and concomitant. A **Trust** is defined as **a fiduciary relationship in regard to property**. The instrument that defines the fiduciary relationship is called the **Indenture**. The properties held under the indenture are called **Corpus**. A trust has one indenture; one or more **Trustees;** one or more **Corpus;** and one or more “**Beneficiaries”**.

There is no such thing as a trust estate. A decedent’s corpus is called a cadaver, or “the body”, depending upon the context in which it is referenced. A decedent’s estate has heirs, it does not have beneficiaries and a trust corpus has beneficiaries, it does not have heirs.

## The Relationship

A trust is a form of agreement comprised of an indenture and a corpus. The indenture defines the relationship wherein the trustee owes active fiduciary duties (and not merely nominal duties) to be performed by the trustee for the sole benefit of the beneficiary. The trustee holds bare legal title to the corpus only for that purpose while the beneficiary holds equitable title to the corpus and has the full right of enjoyment. The beneficiary is considered the true owner of the trust corpus.

## The Components

A trust relationship requires (1) the **separation of legal and equitable titles** and (2) **affirmative fiduciary duties to be performed by the trustee for the benefit of the beneficiary** and (3) the duties to be performed by the trustee must be **enforceable by the beneficiary**.

**Merger**: If legal and equitable titles to the corpus merge in the beneficiary the trust collapses and the corpus becomes property of the beneficiary in their individual capacity and not protected in trust.

**Active and Passive Trusts**: If the obligations of the trustee are merely nominal and not active, there is no trust and if the affirmative obligations of the trustee are not enforceable by the beneficiary there is no trust. The corpus of a passive trust vests in the beneficiary. A trust becomes passive when there are no active fiduciary duties to be performed by the trustees for the benefit of the beneficiaries.

# Relevant Facts

1. Please take judicial notice of the record in the Estate of Elmer H. Brunsting No. 412,248. Please also take judicial notice of the record in the Estate of Nelva E. Brunsting No. 412,249. Elmer H. Brunsting and Nelva E. Brunsting’s estate plan is comprised of wills directing independent administration that were to pour-over into the sole devisee trust at their passing. **Elmer H. Brunsting passed on April 1, 2009** and **Nelva E. Brunsting passed November 11, 2011**.
2. The record will show that the **wills of Elmer H. Brunsting** [No. 412248] and **Nelva E. Brunsting** [No. 412249] were both admitted to probate August 12, 2012 and that letters testamentary for the **Independent Administration** of both pour-over estates were issued to Carl Henry Brunsting on August 28, 2012.

# WANT OF SUBJECT MATTER JURISDICTION

[Tex. Est. Code § 402.001](http://www.probatemafia.com/Brunsting/Tab%20L%20TEXAS%20ESTATES%20CODE%20402.001%20No%20further%20action%20of%20any%20nature%20after%20approval%20of%20the%20inventory.pdf) - General Scope and Exercise of Powers

“When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, **as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court**.”

1. [**Verified inventories, appraisements, and lists of claims**](http://www.probatemafia.com/Brunsting/Tab%2015%20Inventory%20and%20Order%20Approving%20Inventory%20Case%20412248_Certified.pdf) were filed in both estates by the independent executor on March 26, 2013 and [**approved by the probate court**](http://www.probatemafia.com/Brunsting/Tab%2022%20%202013-04-04%20Order%20Approving%20Inventory%20412249%20Certified.pdf) April 5, 2013. Drop Orders were issued on April 4, 2013. Four days later, on April 9, 2013, Independent Executor Carl Henry Brunsting filed a declaratory judgment action in the statutory probate court under Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code related only to the sole devisee trust. [No. 412,249-401]
2. The Independent executor’s April 9, 2013 declaratory judgment action fails to even mention the estates code as required by Tex. Est. Code § 402.001 and clearly fails to invoke the subject matter jurisdiction of a statutory probate court. Furthermore, Elmer H. Brunsting passed on April 1, 2009 and thus, the Independent Executors April 9, 2013 declaratory judgment action missed the statute of limitations for bringing claims in the Estate of Elmer Brunsting by 4 days.
3. As to any notion that the statutory probate court has subject matter jurisdiction over living trusts whether or not there is a pending probate, the legislature made it clear that was not the case in 2017 when they repealed [Texas Government Code §1034(a) and amended Government Code Section 25.0021 confining statutory probate court subject matter jurisdiction to probate, guardianship, mental health and eminent domain proceedings](http://www.probatemafia.com/Brunsting/77(R)%20HB%20689%20-%20Bill%20Analysis.pdf).[[2]](#footnote-2)
4. The only jurisdiction this court has over the Brunsting Family Living Trust is the administrative jurisdiction to dismiss the independent executor’s declaratory judgment action for want of subject matter jurisdiction.
5. Living trust successor beneficiary Andrew Curtis appearing specially and not generally herein moves this court to dismiss all matters filed as ancillary to the Estate of Nelva Brunsting No 412249 and to vacate and set aside all of the void orders entered after April 5, 2013, in all ancillary matters, for want of subject matter jurisdiction.
6. On October 22, 2024 attorney Stephen Mendel filed a motion for an interim distribution to “the remaining beneficiaries” to pay alleged fees incurred by “the trust”, which of course is not “the estate”.
7. Please take judicial notice that Andrew Curtis is not now and has never been party to any proceeding or claim filed in this court and that no judgment entered in this court can prejudice his rights as a successor beneficiary to his mother’s interests.
8. Further, Movant, appearing specially and not generally sayeth naught.

Respectfully submitted,

Andrew Curtis

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**CERTIFICATE OF SERVICE**

I Andrew Curtis hereby certify that the foregoing document was served on all counsel of record on Saturday, December 21, 2024 through the state electronic filing system with the exception of the estates independent executor as there is no administrator for the Estate of Elmer H. Brunsting [No. 412248] or the Estate of Nelva E. Brunsting [No. 412249].

1. Ballentine's Law Dictionary “Nothing similar is the same thing.” See 6 Binn. (Pa.) 506. [↑](#footnote-ref-1)
2. TEX. GOV'T CODE ANN. § 25.1034(a) “Repealed by Acts 2001, 77th Leg., ch. 635, Sec. 3(2), eff. Sept. 1, 2001.” Tex. Gov't Code § 25.1034 [↑](#footnote-ref-2)