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 §

## Motion to Dismiss for Want of Jurisdiction

1. Real party in interest Candace Curtis herein challenges the subject matter jurisdiction of Harris County Probate Court to hear or determine any matter related to the Brunsting Family Living Trust.

# 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.”

# RELEVANT FACTS

1. The Probate court is hereby requested to take judicial notice of the record in the closed, pour-over Estates of Elmer H. Brunsting No. 412,248 and Nelva E. Brunsting No. 412,249.
2. 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.
3. 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.
4. [**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 4, 2013. Drop Orders were also issued on April 4, 2013. Four days later, April 9, 2013, Attorney Bobbie G. Bayless, using her diminished capacity client as Independent Executor, 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.
5. The Independent executor’s April 9, 2013 declaratory judgment action [No. 412,249-401] 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 in regard to independent administration. Nothing in the former Probate Code or the current Estates Code specifically and explicitly provides for the probate court to hear the independent administrator’s declaratory judgment action and after more than a decade in stasis no declaratory judgment has been entered.
6. 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).[[1]](#footnote-1) [Exhibit x]
7. The only jurisdiction the statutory probate court has over the Brunsting Family Living Trust is the administrative jurisdiction to dismiss the independent executor’s declaratory judgment action and all subsequent actions filed as ancillary to these pour-over estates for want of subject matter jurisdiction.

"A trial court has no discretion to refuse to set aside a void judgment, but **has the duty to do so at any time that such matter is brought to its attention**."). Attacking a void judgment may be done directly, through a bill of review, or collaterally. SeePNS Stores, Inc. , [379 S.W.3d at 271-72](https://casetext.com/case/pns-stores-3#p271) ; see alsoThomas , [906 S.W.2d at 262](https://casetext.com/case/thomas-v-miller-11#p262) ("[A]n attack [on a void judgment] may be made in any proceeding having as its general objective a finding that such judgment was void when entered." In re Miramontes, 648 S.W.3d 590, 607 (Tex. App. 2022)

"A judgment is void only when it is clear that the court rendering judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court."). And, consistent with Texas jurisprudence, a court has "not only the power but the duty to vacate the inadvertent entry of a void judgment at any time, either during the term [of plenary power] or after the term, with or without a motion therefor." Thomas v. Miller , 906 S.W.2d 260, 262 (Tex.App.—Texarkana 1995, no writ) (quoting Bridgman v. Moore , 143 Tex. 250, 183 S.W.2d 705, 707 (1944) ); see also Metropolitan Transit Authority v. Jackson , 212 S.W.3d 797, 802 (Tex.App.—Houston [1st Dist.] 2006, pet. denied) ("A trial court has no discretion to refuse to set aside a void judgment, but has the duty to do so at any time that such matter is brought to its attention."). Attacking a void judgment may be done directly, through a bill of review, or collaterally. See PNS Stores, Inc. , 379 S.W.3d at 271-72 ; see also Thomas , 906 S.W.2d at 262 ("[A]n attack [on a void judgment] may be made in any proceeding having as its general objective a finding that such judgment was void when entered."). In re Miramontes, 648 S.W.3d 590, 607 (Tex. App. 2022)

1. This purely legal question of statutory probate jurisdiction is currently pending before the First District Court of Appeal in Houston in No. 01-23-00362-CV and it is not a difficult legal question. What is difficult is unraveling the mess created by the collusion amongst the participating attorney’s conflict engineering fraud and they should all be disbarred for their egregious violation of the Disciplinary Rules of Professional Conduct.

# VIOLATION OF THE FEDERAL INJUNCTION

1. Trust property is not liable to satisfy the personal obligations of the trustee. Texas property Code §114.0821. Neither Anita Brunsting nor her attorney Stephen Mendel, were ever granted authority to incur attorney fee obligations against the trust corpus and their motions for distributions to pay attorney fee creditors is a judicial admission that they are in violation of the federal injunction.
2. Misapplication of Fiduciary Property is a felony under Texas Penal Code §32.45 and Misapplication of Fiduciary Property held in trust for elder and disabled beneficiaries is a felony under Texas Penal Code §32.53.
3. Further, Movant 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 Friday, December 20, 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. 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-1)