

TAB 48

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. _____

THE ESTATE OF:)	IN THE PROBATE COURT
NELVA E. BRUNSTING,)	NUMBER 4 (FOUR) OF
DECEASED)	HARRIS COUNTY, TEXAS

* * * * *

PRETRIAL HEARING

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On the 31st day of March, 2022, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable James Horwitz, Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

A-P-P-E-A-R-A-N-C-E-S:

ATTORNEY FOR CARL BRUNSTING:

Ms. Bobbie G. Bayless
BAYLESS & STOKES
Attorney at Law
SBN 01940600
2931 Ferndale
Houston, Texas 77098
713.522.2224
bayless@baylessstokes.com

ATTORNEY FOR DEFENDANT AMY BRUNSTING:

Mr. Neal E. Spielman
GRIFFIN & MATTHEWS
Attorney at Law
SBN 00794678
1155 Dairy Ashford
Suite 300
Houston, Texas 77079
281.870.1124
nspielman@grifmatlaw.com

ATTORNEY FOR DEFENDANT ANITA BRUNSTING:

Mr. Stephen A. Mendel
Attorney at Law
THE MENDEL LAW FIRM, L.P.
SBN 13930650
1155 Dairy Ashford
Suite 104
Houston, Texas 77079
281.759.3213
steve@mendellawfirm.com

ATTORNEY REPRESENTING VACEK & FREED ET AL:

Mr. Cory S. Reed
Attorney at Law
THOMPSON, COE, COUSINS, & IRONS, LLP
SBN 24076640
One Riverway
Suite 1400
Houston, Texas 77056
713.403.8213

1 ATTORNEY FOR CANDACE LOUISE CURTIS:

2 Ms. Candice L. Schwager
3 SCHWAGER LAW FIRM
4 Attorney at Law
5 SBN 24005603
6 P.O. Box 580008
7 Houston, Texas 77258
8 832.315.8489
9 candiceschwager@icloud.com

6 ATTORNEY FOR CAROLE A. BRUNSTING:

7 Mr. John Bruster "Bruse" Loyd
8 JONES, GILLASPIA & LOYD, L.L.P.
9 Attorney at Law
10 SBN 24009032
11 4400 Post Oak Pkwy
12 Suite 2360
13 Houston, Texas 77027
14 713.225.9000

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VOLUME 1
(Pretrial Hearing)

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1 March 31, 2022 (WHEREUPON the following proceedings
2 were conducted via Zoom and YouTube:)

3 PROCEEDINGS:

4 THE COURT: All right. This is our
5 pretrial hearing. Good afternoon, lawyers.

6 This is Case Number 412249-401, in the
7 Estate of Nelva E. Brunsting.

8 For the record, I need to have each
9 attorney make an appearance and tell the Court who you
10 represent.

11 MR. MENDEL: Steve Mendel, Your Honor,
12 representing Anita Brunsting who is a Defendant and a
13 Co-Trustee in this matter.

14 MS. SCHWAGER: Candice Schwager
15 representing Candace Curtis in this matter who is the
16 Plaintiff and Counter-Defendant.

17 MR. LOYD: Your Honor, Bruse Loyd, and I
18 represent Carole Brunsting, one of the beneficiaries of
19 the Trust.

20 THE COURT: Have you filed a notice of
21 appearance?

22 MR. LOYD: Yes, Your Honor, I filed it. I
23 got the electronic confirmation, but I'm -- and I'm
24 receiving, just today, I started receiving filings; but
25 I filed a notice a couple of weeks ago.

1 THE COURT: Okay.

2 MS. BAYLESS: Bobbie Bayless, Your Honor,
3 on behalf of Carl Brunsting.

4 MR. SPIELMAN: Neal Spielman, Your Honor,
5 on behalf of Amy Brunsting.

6 MR. REED: Cory Reed on behalf of Candace
7 Kunz-Freed.

8 OFF-DOCKET MOTIONS:

9 THE COURT: Okay. So, there's some
10 pending motions that are not set for today's pretrial,
11 but I want to briefly discuss them for a few moments.

12 Ms. Schwager, I believe you filed a motion
13 to vacate or set aside the February 25th, 2022, order
14 citing Government Code 74.053(a); is that correct?

15 MS. SCHWAGER: There were 1, 2, 3, 4, 5, 6
16 7, 8, 9, 10 grounds, and that was just one of them.

17 THE COURT: Okay. Well, just so I can
18 clear that up - when you take the position that there
19 was a valid objection to Judge Stone under 74.053(a), I
20 want to point you to Government Code 25.0022, Section R
21 which specifically states that Chapter 74 does not apply
22 to an assignment in a probate court.

23 Also, you have a issue you raised in
24 regard to a bond. Section 25.00231(e) specifically
25 states that this bond section does not apply to an

1 assigned judge sitting by assignment in a statutory
2 probate court. So, as far as I'm concerned, those
3 matters are moot, and we don't have to hear about that
4 any further.

5 MS. SCHWAGER: When you say -- I'm sorry.
6 Those matters, are you just speaking of is that ground?

7 THE COURT: Yeah, those two issues for
8 sure. I hadn't really studied the full extent of your
9 motion to exclude or vacate, but those were the
10 technical -- seems like those were the technical
11 matters.

12 MS. SCHWAGER: Okay.

13 PRETRIAL CONFERENCE:

14 THE COURT: So, what we need to do today
15 is we have a trial setting that I believe is scheduled
16 for April 5th. And correct me if I'm wrong, but I
17 believe that we're seeking a 12-person jury; is that
18 correct?

19 MR. MENDEL: Your Honor, I don't -- we're
20 here today, and counsel for the -- with the exception of
21 Ms. Schwager, we don't -- that trial is scheduled to be
22 on fees. There are no other pending issues among the
23 parties subject to these motions to vacate and things
24 like that. But there's no pending issue for trial other
25 than the issue of fees and Carl Brunsting, Carole

1 Brunsting, Amy Brunsting, and Anita Brunsting have an
2 agreement in principal with regard to the fees which we
3 think negates the necessity of a trial next week;
4 specifically, the agreement in principal is not yet
5 reduced to writing. There's still some issues being
6 negotiated. But with regard to the fees - through
7 today - the estimate is about \$680,000 plus-or-minus for
8 the group in the Matthews Law Firm that represents Amy
9 Brunsting and the Mendel Law Firm that represents Anita
10 Brunsting and I think Ms. Bayless on behalf of Carl
11 Brunsting and Mr. Loyd on behalf of Carole Brunsting
12 would confirm that those fees are reasonable and
13 necessary, which from our perspective, therefore
14 eliminates the necessity of a trial. I've asked Mr.
15 Bayless -- Ms. Bayless and Mr. Loyd to please confirm
16 that, if they would.

17 MS. BAYLESS: That's right, Your Honor.

18 MR. LOYD: That's correct, Your Honor.

19 THE COURT: All right. I neglected to ask
20 Mr. Munson to speak. Can you unmute and tell me if
21 you're an attorney, who you are, and who you represent?

22 (No audible response)

23 THE COURT: We have a person on the screen
24 named Rik Munson; anybody identify that person?

25 MS. SCHWAGER: Yes, Your Honor, he's a

1 witness of mine and Candace Curtis' paralegal who is my
2 paralegal.

3 MR. MENDEL: We also understand he's the
4 boyfriend of Candace Curtis.

5 MR. SPIELMAN: I didn't follow that
6 sentence at all. Mr. Munson is -- is Ms. Schwager
7 saying that Mr. Munson is her paralegal or that Ms.
8 Schwager is -- I mean, Ms. Curtis is her paralegal?

9 MS. SCHWAGER: No, Mr. Munson is.

10 MR. SPIELMAN: Okay. And is he actually
11 the person that's on the line because in the past, it's
12 been your client who's signed in under that name.

13 MS. SCHWAGER: I believe the invitation
14 was sent out to Mr. Munson, so he joined us today as my
15 paralegal to take notes.

16 MR. MENDEL: Well, is he going to come off
17 video and answer the judge's question?

18 THE COURT: Mr. Munson, can you hear? Can
19 you unmute, please, Mr. Munson and talk to me.

20 (No audible response)

21 MS. SCHWAGER: I'm going to text him.

22 THE COURT: Okay. Ms. Schwager, just so
23 you know - if he doesn't respond to me, I'm going to
24 remove him from this hearing, and he can watch on
25 YouTube and take notes.

1 MS. SCHWAGER: Okay.

2 THE COURT: So, Mr. Munson, for whatever
3 reason - technical or intentional - you're not
4 responding to me; and therefore, I'm instructing my
5 staff to remove you from this hearing. You can go on --

6 MS. SCHWAGER: I'm --

7 THE COURT: You can go on --

8 MS. SCHWAGER: I'm sorry.

9 THE COURT: Please don't interrupt.
10 Please don't interrupt me.

11 You can, Mr. Munson, you can go on YouTube
12 and watch this and take notes. So, Judge Comstock, if
13 you're controlling this, can you remove Mr. Munson.

14 (Mr. Munson removed from Zoom)

15 THE COURT: Okay. So, what I'm hearing is
16 that - from Mr. Loyd, Ms. Bayless, Mr. Mendel and Mr.
17 Spielman - that there is an issue involving attorneys'
18 fees but no need for a trial. And I want to make sure
19 what I've said, as far as those lawyers are concerned,
20 is correct. Is that correct, Mr. Spielman?

21 MR. SPIELMAN: I believe the correct way
22 to say it is that there is no issue with attorneys'
23 fees, and the non-forfeited Brunsting siblings
24 represented by myself, Mr. Mendel, Ms. Bayless, and Mr.
25 Loyd have agreed, in principal, to the amount of the

1 fees, and we will paper-up an agreement as to how
2 they'll be funded within the context of the Court's
3 order on the summary judgment.

4 THE COURT: All right. And then in
5 regards to Ms. Schwager's client - I believe there's
6 been a motion for summary judgment signed that, in
7 essence, removes her from this -- her ability to collect
8 inheritance; is that correct, Mr. Spielman?

9 MR. SPIELMAN: It is correct, Judge;
10 that's the summary judgment order that Judge Stone
11 signed after consulting with you when we were last
12 before the Court on the pretrial conference of February
13 the 25th, 2022.

14 THE COURT: And so, the Co-Trustees filed
15 a motion to exclude testimony and evidence for sanctions
16 and for third contempt as to Candace Louise Curtis. Do
17 you want to just explain to me what you're trying to
18 accomplish with that?

19 MR. SPIELMAN: I will try to do so
20 briefly, Judge, because that is also - like you
21 mentioned earlier - not technically on the hearing
22 docket for today.

23 But, essentially, Judge, that was a motion
24 that we had filed before learning of the summary
25 judgment stemming from Ms. Curtis' various failures to

1 comply with the Court's orders and her conduct that we
2 felt should preclude her from being able to present her
3 case at trial because -- or allow our case against her
4 or about her. Since it was opposed as a motion for
5 sanctions and contempt, I think it survives the summary
6 judgment and can still be considered as such in
7 post-summary judgment. And then what probably has not
8 made it to your screen, Judge, is that this morning, the
9 supplement to it, that focuses more on the motion to
10 exclude as a non - I'll call it, for purposes of right
11 now - a non-sanction-based reason to exclude Ms. Curtis
12 based off of the Court's summary judgment order in which
13 she's, essentially, forfeited her interest in being
14 disinherited.

15 So, long story - short, there's no,
16 there's no standing, no capacity for her to appear or
17 participate in the trial or any matter other than those
18 limited things that, in part, would be connected with
19 her effort to appeal the summary judgment order and --

20 THE COURT: So --

21 MR. SPIELMAN: -- everything is probably
22 going up, we figured that it probably makes -- that it
23 made sense to put it back on the docket whether phrased
24 as the motion to exclude based on the summary judgment
25 or and/or as the sanctions and the contempt so that the

1 record is clear and particularly since the contempt and
2 the sanctions part, Judge, you know, it's pretty
3 significant when you consider the totality of Ms.
4 Curtis' behavior. And, again, we'll argue the details
5 of that later if necessary, but we thought it important
6 the record be clear about who Ms. Curtis is and how
7 she's conducted herself throughout the course of the
8 [inaudible].

9 THE COURT: So, the question before the
10 Court today, if we're not going to have a trial is - to
11 what degree the Court is willing to entertain Ms.
12 Schwager's motion to vacate or set aside the summary
13 judgment order?

14 MR. MENDEL: Well, Your Honor, it was
15 indicated from Ms. Vaso that that would be rescheduled.
16 And there are several matters that we think need to be
17 set for a hearing; one would be Ms. Schwager's motion or
18 her client's motion to vacate. It's important that the
19 Co-Trustees, that there be a ruling on the motion to
20 exclude. There's the possibility -- we want to put the
21 Candace Curtis versus the Co-Trustee portion of the case
22 into a position for a final judgment to be issued so
23 that they can pursue whatever appellate remedies they
24 want to pursue; that may involve a severance; it may
25 not, but that's an issue that would need to be

1 addressed.

2 There are also some claims by the estate
3 that were filed early on by Carl Brunsting, and we
4 believe those claims are going to be resolved; but if
5 not resolved in advance of a, of a final judgment that
6 would deal with Curtis and the Co-Trustees and maybe
7 that gets severed out, but the rest of the parties
8 believe that those are going to be a moot issue.

9 So, we would respectfully suggest that
10 a -- they be set out, say, a couple of weeks down the
11 road, and all of these pending issues be scheduled for a
12 hearing so they can all be resolved at one time; and it
13 would also give the parties - that have reached this via
14 agreement in principal - to finish a written settlement
15 agreement for tender to and approval by the Court.

16 THE COURT: How long of a time period you
17 think you need in a future date? Can it be accomplished
18 in one day?

19 MR. MENDEL: The hearing?

20 THE COURT: Yes.

21 MR. MENDEL: The hearing can be
22 accomplished in one day, yes.

23 THE COURT: On all these various matters?

24 MR. MENDEL: Yes. I would imagine the
25 longest one is probably going to be Ms. Curtis' motion

1 to vacate. Everything else from the perspective of the
2 other four parties, I think is going to be extremely
3 short.

4 THE COURT: All right. And we have to be
5 conscious of the Court's plenary power from the date of
6 this motion for summary judgment that was -- when was
7 that signed; was that February 25th?

8 MR. SPIELMAN: Yes, Judge, and I think
9 that's an important thing that we're going to have to
10 deal with as well. I think some of what Ms. Schwager
11 has filed on behalf of Ms. Curtis may already be late.
12 And as I mentioned -- something that Mr. Mendel
13 neglected to mention - Judge, you were talking earlier
14 about a Government Code, issues that were raised in Ms.
15 Curtis' motion to vacate. There's also a separate
16 document which I believe is filed as an amended
17 objection to the appointment of any former judge or
18 something, words to that effect. And I think we
19 probably have to consider that objection as well at some
20 point haven't had a -- we, the Co-Trustees, have not had
21 a chance to respond to that --

22 THE COURT: Well, that objection is under
23 a general rule of Government Code 74. It's not
24 applicable to a probate judge's sitting by assignment,
25 and it specifically is - as I mentioned earlier - that's

1 25.0022(r), says 74, Chapter 74 doesn't apply in this
2 instance.

3 MR. SPIELMAN: Okay. I may have
4 misunderstood, then Judge. I thought, I thought the
5 issues were separate. But if we don't need to -- if
6 that objection is being, I guess, denied, then it's been
7 denied, and we don't have to deal with it anymore.

8 THE COURT: Well, that objection, as far
9 as I can read in the motion to set aside, as far as her
10 reference to Government Code 74.053(a), that's denied.
11 And her issue about bond and Judge Stone's issue on
12 having a bond under the Government Code 25.00231(e),
13 doesn't apply in this circumstance to a judge sitting by
14 assignment in a statutory probate court.

15 So, Ms. Schwager, what -- how soon could
16 you be ready to make your argument?

17 MS. SCHWAGER: Well, my brief is very
18 comprehensive; it has all the certified documents
19 necessary that were not entered into the record by the
20 Co-Trustees who admit that none of their exhibits were
21 even authenticated in their motion which was untimely.

22 But I think I agree with Mr. Mendel's
23 appraisal. I'd like some time to respond to the
24 motion to exclude in case you overturn this February
25 25th order. As I mentioned, there are many more grounds

1 other than the objection to Judge Stone.

2 THE COURT: Okay. Well, Judge Comstock
3 when can we fit this in?

4 JUDGE COMSTOCK: Well, so --

5 THE COURT: How much time -- do you want
6 to try and do it next week, Ms. Schwager?

7 MS. SCHWAGER: The following week would be
8 better. I have some hearings next week.

9 THE COURT: Okay.

10 JUDGE COMSTOCK: I believe Mr. Spielman
11 suggested a couple of weeks. We do have some time
12 Thursday, the 14th; that is the day before the Good
13 Friday holiday.

14 THE COURT: Will that work for you, Ms.
15 Schwager?

16 MS. SCHWAGER: Yes, Judge.

17 THE COURT: How about you, Mr. Mendel?

18 MR. MENDEL: Judge, that's -- the 14th is
19 problematic for me. I have a long-standing commitment
20 already that I can't move.

21 THE COURT: What about the 13th -- well, I
22 don't know. I don't know what our court schedule is.

23 JUDGE COMSTOCK: We have a pretty tric --
24 pretty busy schedule on the 13th. I suggested the 14th
25 because we were set for a two-week trial docket

1 including that date. We could try to fit something in
2 on the 11th if that will provide enough time in the
3 afternoon.

4 MS. SCHWAGER: I believe, Judge.

5 MR. MENDEL: The 11th would be good for
6 myself, Your Honor.

7 THE COURT: And Ms. Schwager, I couldn't
8 understand your response.

9 MS. SCHWAGER: Yes, sir.

10 THE COURT: It's okay with you?

11 MS. SCHWAGER: Yes.

12 THE COURT: All right. Mr. Spielman?

13 MR. SPIELMAN: That's fine; I'll make that
14 work.

15 THE COURT: Okay. And, Ms. Bayless?

16 MS. BAYLESS: Well, Judge, I'm set for
17 trial on the 11th. I don't yet know whether we would go
18 on that day, so I think it will be fine. My involvement
19 is not as important as the other people's, but I can --
20 I think I can make it work if I get --

21 THE COURT: Mr. Loyd?

22 MR. LOYD: Yes.

23 THE COURT: Is that okay with you?

24 MR. LOYD: Yes, sir.

25 THE COURT: And Mr. Reed, what are we

1 doing with your client?

2 MR. REED: I mean, hopefully we're going
3 to get some action. I mean, that's what I would hope.
4 I mean, I think what I'm seeing is we're seeing some
5 resolutions of the main characters, and I'm hoping, kind
6 of once you've got that finalized, we can figure out how
7 to get our case moving or wrapped up itself, so.

8 THE COURT: Thank you. Judge Comstock,
9 what time on the 11th?

10 JUDGE COMSTOCK: That's Monday. Of
11 course, we have mental health in the morning. So,
12 depending on how much time they need. You know, it's
13 always risky setting something early in the afternoon on
14 Monday. You know, if mental health goes long, then we
15 have a problem.

16 THE COURT: Let's set it for 1:30 on
17 Monday, April 11th.

18 JUDGE COMSTOCK: Okay.

19 THE COURT: And I'll try to get through my
20 commitment docket as fast as I can, all right,
21 gentlemen?

22 MR. SPIELMAN: With regard to the hearing
23 being on the 11th, you want to set any specific
24 deadlines perhaps whether it be the Co-Trustees
25 responding to the motion to vacate or Ms. Curtis or Ms.

1 Schwager responding, I guess, just the supplement to the
2 motion to exclude because the other parts of that motion
3 have been fully briefed and sur replied and everything
4 already.

5 THE COURT: Well, I think it's reasonable
6 that any replies ought to be submitted to opposing
7 counsel by 5 p.m. on that Friday before that. I guess
8 that's the 8th?

9 MR. SPIELMAN: Yes, that works for me,
10 Judge, and I think that works for everybody, hopefully,
11 because, you know, I think - and I've done it myself -
12 but in this case, there seems to always be sort of a
13 last-second flurry of stuff that probably doesn't even
14 make it onto your desk on time. So, having a deadline
15 like that, I think might help everybody.

16 COURT'S RULING:

17 THE COURT: All right. Okay. Well, then
18 I won't call a panel on the 5th of April. And I will
19 see you folks back on Monday afternoon, April 11th.

20 MR. SPIELMAN: Understood.

21 THE COURT: All right. Y'all have a good
22 week, and all of you are excused.

23 MR. LOYD: Thank you, Your Honor.

24 MR. SPIELMAN: Thank you, Judge.

25 * * * * *

1 The State of Texas)
2 County of Harris)
3

4 I, Hipolita Lopez, Official Court Reporter in and
5 for the Probate Court Number Four of Harris County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record
14 truly and correctly reflects the exhibits, if any,
15 admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$147.00.
18 and was paid by MS. CANDACE L. CURTIS.

19 WITNESS MY OFFICIAL HAND this the 7th day of
20 April, 2022.

21
22 /s/ Hipolita G. Lopez
23 HIPOLITA G. LOPEZ, Texas CSR #6298
24 Expiration Date: 10-31-22
25 Official Court Reporter
Probate Court Number Four
Harris County, Texas
201 Caroline, 7th Fl.
Houston, Texas 77002