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TRIAL COURT NO. 412,249-401

IN THE MATTER OF : THE PROBATE COURT OF
THE ESTATE OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, : PROBATE COURT NO. 4
DECEASED
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COURT REPORTER'S RECORD

MOTION FOR PROTECTIVE ORDER

VOLUME 1 OF 1 VOLUMES

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MORNING SESSION
August 3, 2015

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TRIAL COURT NO. 412,249-401

IN THE MATTER OF : IN THE PROBATE COURT OF
THE ESTATE OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, : PROBATE COURT NO. 4
DECEASED

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BE IT REMEMBERED THAT UPON THIS,
the 3rd day of August, 2015, the above entitled and
numbered cause came on for Hearing on Carol
Brunsting's Motion for Protective Order before the
HONORABLE CHRISTINE BUTTS, Judge of Probate Court
No. 4 of Harris County, Texas; and all parties
appearing in person and/or by counsel, all preliminary
matters having been disposed, and proceedings had, the
following was heard, viz.:

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REPORTED BY:

Judith J. Kulhanek, CSR #598
Deputy Official Court Reporter
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Waller, TX 77484
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(713) 515-0221 (c)

MORNING SESSION

1
2 August 3, 2015

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4 THE COURT: We are here in Cause
5 No. 412,249-401, the Estate of Nelva E. Brunsting,
6 Deceased.

7 We're here on Carl Henry Brunsting's
8 motion for protective order. And present are -- my
9 docket sheet says Neal Spielman for Amy Brunsting --

10 MR. SPIELMAN: Yes, Your Honor.

11 THE COURT: And Brad Featherston for
12 Anita Brunsting-Riley.

13 MR. FEATHERSTON: Present, Your Honor.

14 THE COURT: And then Stephen Mendel --

15 MR. FEATHERSTON: He's with my firm,
16 Your Honor.

17 THE COURT: Okay. I'm sorry. He is
18 not present.

19 And Bobbie Bayless is here for Carl
20 Brunsting and also for Drina Brunsting.

21 MS. BAYLESS: Yes, Your Honor.

22 THE COURT: Candace Curtis is pro se,
23 and I don't see her in the courtroom.

24 And then --

25 MS. BEDUZE: Kathleen Beduze for Carole

1 Brunsting, Darlene Smith left.

2 THE COURT: Kathleen Beduze is here for
3 beneficiary, Carole Brunsting who is here?

4 MS. BEDUZE: Correct. And we joined in
5 the response.

6 THE COURT: Thank you.

7 MS. BEDUZE: We jointly filed that.

8 THE COURT: Okay.

9 MR. SPIELMAN: Response?

10 THE COURT: I haven't found -- we don't
11 have a response.

12 MR. SPIELMAN: Well, that would
13 probably be my problem, Judge.

14 My office filed it on Friday afternoon.
15 At the very least, I have confirmation pages that it
16 went to the attorneys.

17 THE COURT: Okay. Did Ms. Bayless --
18 did you receive a copy of the response?

19 MS. BAYLESS: I did. I didn't ever
20 receive any notification it was filed, but I did
21 receive a fax.

22 MR. SPIELMAN: I can step out while you
23 guys get going and call my office and see if we have
24 the confirmation.

25 THE COURT: Well, we can check if it

1 has been filed.

2 (SHORT DELAY IN PROCEEDINGS.)

3 MR. SPIELMAN: Judge, I don't know --
4 we have an envelope number, and I can tell you the
5 envelope number was 6316359, and it was I guess put
6 into the system, whatever the proper terminology is,
7 at 4:08 p.m. on 7/31/15 which would be last Friday,
8 and it says that it is submitted is the terminology
9 there.

10 THE COURT: So --

11 MR. SPIELMAN: Yeah, but, I mean, I
12 think hopefully the most important part for the
13 purposes of our hearing, with all due respect to the
14 Court, but the attorneys at least all have it. So
15 nobody on this side of the Bench at least is surprised
16 by it.

17 THE COURT: Okay. All right.

18 Ms. Bayless?

19 MS. BAYLESS: Your Honor, we're here on
20 a -- what my motion was termed a motion for protective
21 order. It actually goes beyond the issues of
22 pre-trial discovery.

23 And you will see from the defendant's
24 response they kind of deal with it as just a typical
25 motion for protective order involving pre-trial

1 discovery issues.

2 As to background, which is set forth in
3 my motion, but basically is that back in 2012, the
4 plaintiff didn't have very much information on what
5 had occurred -- we did a pre-suit discovery action --
6 asked for recordings, both video and audio, got
7 nothing.

8 The defendants in this case have gone
9 through several counsel. They said they were going to
10 produce everything, and that person was fired. I
11 don't know what happened, I'm not sure. But since
12 Mr. Spielman and Mr. Featherston have been in there,
13 there have been several supplemental responses.

14 And then suddenly on July 1st, I get
15 this envelope in the mail that had what is obviously
16 recordings that my clients did not know about or
17 consent to, and audio recordings obviously made while
18 Carl was at his mother's home and had telephone
19 conversations with his wife and video recordings from
20 Carl's ICU hospital room.

21 I tried to communicate -- I don't think
22 I had a conversation with anybody but Mr. Featherston
23 in fairness -- but I tried to -- because he's the
24 person who produced them. I called him up and tried
25 to get an explanation from him for why these weren't

1 illegal recordings, and what we were going to do about
2 that, and stressed that -- he I think sort of had the
3 impression, well, Drina is mad about this. And I
4 tried to explain to him this was a big deal to
5 everyone concerned, including me.

6 We were going to continue to talk about
7 it. He wanted to see the motion for protective order
8 before he wanted to -- me to discuss any up front.

9 So I said, well -- we had -- at that
10 time, we didn't yet have our third-party administrator
11 and our temporary administrator, and so I just felt
12 the need to get it on file.

13 Subsequently, what he did say to me in
14 that conversation that is set forth in their response
15 is that these came from an answering machine. I do
16 not want to go into the substance of the conversations
17 for the very reason that they are, in my view, illegal
18 wiretap conversations, but they are not from an
19 answering machine.

20 There is no answering machine answering
21 these recordings. They are clearly edited in some
22 instances because they stop in the middle of a
23 sentence. There is no dating on -- other than looking
24 at the property of the recordings that were sent to
25 me, which in and of itself is interesting, because

1 these recordings occurred back in March of 2011. The
2 video recordings occurred in May of 2011.

3 And so clearly were edited in February
4 of this year. We were down here having hearings in
5 February of this year about this temporary
6 administration issue.

7 The other interesting thing is that I
8 believe they were mailed to me on the same day that
9 the defendants filed their no evidence motion for
10 summary judgment suggesting that there had been plenty
11 of time for discovery on that period since 2012, I
12 think a total of 38 months, when these documents were
13 sent to me the same day they filed that motion.

14 You know, under normal circumstances,
15 that would be a long time for discovery. But it takes
16 two to tango, as they say, and these documents had not
17 been previously provided.

18 Now, when I talked to Mr. Featherston,
19 I think Mr. Featherston called me, I guess Thursday,
20 about an extension on discovery responses, requests
21 for production, that are due today from the
22 defendants.

23 And when I got these recordings -- just
24 so you understand the background there -- when I got
25 these recordings, I got them on July 1st in the mail,

1 then there's the July 4th holiday, I really didn't
2 even look at what I got, frankly, until after that.

3 But I knew that there was a discovery
4 deadline, and I knew there were recordings in there,
5 so obviously, they -- I guess they would say they were
6 responding to the pre-suit discovery which, frankly, I
7 think is proper, but it should have been done back in
8 the pre-suit discovery.

9 So I didn't want there to be a question
10 about whether they were supposed to be providing
11 things in this litigation. And we had a discovery
12 cutoff at that time for, again, a docket control
13 order, which required me to send out discovery
14 responses that day before I really even knew what was
15 going on.

16 And so here is what they were, but I
17 knew I had to get those documents out or I would be
18 hearing, well, you haven't even requested anything in
19 this case, so that's why you didn't get them.

20 The obvious reason I got them is
21 because they intended to use them in these
22 proceedings, and they know they wouldn't be able to do
23 that if they didn't provide them in some fashion.

24 So when Mr. Featherston talked -- we
25 said we would talk again. He called me about an

1 extension on those requests because they didn't know
2 what the Court would want to have happen, since I
3 filed this motion for protective order indicating that
4 I didn't want anybody else to receive these
5 recordings.

6 And I gave Mr. Featherston, when we
7 talked the first time, the cite from the civil wiretap
8 statute and for the Penal Code provision. So they
9 filed a response that says they don't know what the
10 authority is for this, but we talked about that.

11 I told him that I was not inclined to
12 agree to any kind of an extension on these things.
13 And they've had them since March of 2011, and now
14 we're getting dribbles.

15 And, by the way, during that same
16 period of time, there would have been recordings, I
17 understand, between Candace -- from Candace Curtis and
18 her mother about all of these issues that are at issue
19 in this. You know, those probably would not have had
20 any more consent than the ones I'm here about. But
21 the point is, they have been very selective about what
22 they provided.

23 Clearly, the recording equipment was
24 purchased by the caregiver. The receipt is in the
25 production I believe attached to the motion, and he

1 got reimbursed. I mean, it is just so clear what was
2 going on.

3 So Mr. Featherston and I talked, and he
4 said that he wanted to put this -- the responses off
5 two weeks so that the Court could make a determination
6 on this.

7 I mean, recognizing that there could be
8 some suggestion, there always seems to be a suggestion
9 that I have not done something I'm supposed to do to
10 make something happen, so -- or I have done something
11 incorrectly procedurally, whatever.

12 So I sent an e-mail to all the counsel
13 in the case, and said I don't want there to be any
14 confusion that notwithstanding my request for
15 production, that is a request that those items be
16 produced to me and me only.

17 While normal practice may be that you
18 send it to everybody in the case, these recordings are
19 not to be sent to everybody in the case. And if you
20 do it, I cite it again, the Penal Code Section, you do
21 it at your own peril.

22 So I get a response on Friday afternoon
23 from all the defendants, and their position now --
24 they still believe the answering machine-thing -- and
25 their position is that Carl consented to these

1 conversations.

2 The Court will note that I attached to
3 my motion for protective order e-mails of the same
4 time period where these defendants are planning and
5 plotting ways to obtain a guardianship over Carl, so
6 there is no way that he consented.

7 And he was quite ill at the time and
8 there is no question about that.

9 The recordings done in May of 2011, the
10 video recordings, are in an ICU room at St. Luke's,
11 and he was definitely in an altered mental state,
12 because of medications he was receiving.

13 But you can't -- you can't say, okay,
14 Carl -- they even say in their response that Carl
15 hooked up this equipment.

16 Well, I mean, there is no way. I
17 couldn't even hook up that equipment. It is digital
18 equipment that requires menus and submenus to program.
19 The model that the caregiver purchased -- as indicated
20 on the receipt, I've got the manual for it here --
21 there is no way that a person that was needing a
22 guardianship, as these people have admitted from their
23 e-mails, would be able to do that.

24 And there is no -- the position in
25 their response is this: We have to prove a negative,

1 that we have to prove there was not consent.

2 Well, if they say there is consent,
3 that is an affirmative defense and the burden of proof
4 is on them to show that. And in light of their own
5 e-mails, I don't see how they are going to do that,
6 but the burden is not on me to negate this stuff. The
7 burden is on them to show that there was a consent.

8 So the other -- I mean, it always seems
9 to go this way. I try to work these things out, and
10 it's just the case where nothing gets worked out, and
11 I think that's unfortunate for everyone.

12 But what I filed this morning, because
13 they don't seem to understand that these statutes both
14 say on their face that you're entitled to injunctive
15 relief to prevent the further disclosure and use of
16 these illegal recordings.

17 So they say in response they don't know
18 what my authority is for this relief that I'm
19 requesting. So I was not planning on filing it this
20 morning, but I did file the third supplemental
21 petition which alleges these causes of action and
22 seeks the injunctive relief that those causes of
23 action allow you.

24 And, you know, as usual, had we
25 received all the information and disclosures in the

1 pre-suit discovery action, been able to deal with
2 those issues and work those out, maybe we would have
3 never been in this court. And maybe the lawyers in a
4 district court would have never been sued if they had
5 agreed to continue the tolling agreement until we
6 worked this dispute out.

7 Nothing I suggest seems to work and --
8 maybe that's me. I'm not -- been called out at any
9 direction other than I've been ineffective in
10 resolving disputes in this case. And I have thought
11 surely this was one in which, perhaps, Amy, Anita and
12 Carole did not realize what they were doing. They are
13 not lawyers. Maybe they didn't know you were not
14 supposed to tape people's private conversations
15 without their permission.

16 And that surely when the lawyers, even
17 though they probably should not have even been given
18 the information according to the stuff I read about
19 it, that surely we would be able to resolve it.

20 Instead, I've now had to file a
21 supplemental petition just in order to protect my
22 client's rights on this incredibly offensive issue.

23 THE COURT: You also mention in the
24 protective order the report from --

25 MS. BAYLESS: Yes, right. I mean,

1 there are e-mails. Again, I attached to the motion
2 where they are talking about the -- what happened,
3 both -- the reason we know much of anything is because
4 Candy at one time thought everybody was trying to
5 protect Carl.

6 When she figured out that was not what
7 was happening, we suddenly got a boatload of e-mails
8 which covered the gamut.

9 And her ex-husband -- I guess it's an
10 ex-husband -- anyway, somebody she knows, had been
11 asked for the name of an investigator. And she knew
12 that a GPS tracking device without Drina's consent had
13 been placed on her car.

14 There are e-mails in here talking about
15 reports from the investigator. We have asked for that
16 again since 2012. We have not received anything.

17 THE COURT: Do you claim that those
18 reports still fall into the same category as the
19 recording devices? In other words, were those reports
20 obtained illegally with information at some stages of
21 those reports?

22 MS. BAYLESS: It's really impossible to
23 know without seeing the report, but I think they
24 certainly contain information using the GPS tracking
25 device.

1 THE COURT: Wouldn't you need for those
2 reports to be produced in a motion to compel as
3 opposed to a motion for protective order?

4 MS. BAYLESS: Yes. Again, this is part
5 of why I did the new request for production in this
6 case, because I felt if I filed a motion to compel, I
7 would hear what she tried to compel. There has not
8 been a request in this case. Even though since 2012,
9 Anita has been acting to some extent under that
10 initial request by supplementing these bank records,
11 occasionally; and the tax returns, we've asked for
12 them; stuff like that.

13 But, still, I didn't think I was in a
14 position yet to seek a motion to compel, but the
15 responses are due today.

16 THE COURT: Okay. Well, I think what
17 we'll do is table the issue with regard to the
18 investigator report. I just don't think that a
19 decision on that with regard to a protective order is
20 ripe yet. I don't think that -- we don't have what we
21 don't so -- but on the recordings, I think that is a
22 different story. So we'll address them, the
23 recordings, today.

24 MS. BAYLESS: Okay.

25 THE COURT: Mr. Spielman or --

1 MR. FEATHERSTON: Briefly, Your Honor.

2 THE COURT: Okay.

3 MR. FEATHERSTON: When Bobbie called, I
4 said what do you want? And really, at the end of the
5 day, that's kind of how I am: What do you want?

6 And so the relief that she is seeking
7 here I think are three things that we've outlined in
8 our response.

9 The first one looks like it is some
10 sworn testimony from all of our clients, from Anita,
11 Amy and Carole. And to me, that is best accomplished
12 by deposition.

13 Depositions haven't got off the ground
14 yet in this particular case because it always seems
15 like there is some procedural impairment, one or the
16 other.

17 We have Greg Lester now, and it looks
18 like now we're in a position where depositions can
19 move forward. The impediment there might be whether
20 or not Mr. Lester thinks the claims are even worthy of
21 him sitting through depositions or participating in
22 those depositions.

23 So that is kind of the first thing she
24 is looking for, and that's why I have criticisms of
25 what's -- you know, this is nothing like I have ever

1 seen in a motion for protective order.

2 A motion for protective order
3 ordinarily is someone serves discovery, and the other
4 party says, no, I find that discovery offensive, and
5 so I need protection from the Court.

6 Here, someone may be served discovery,
7 and the documents are being produced in the course of
8 the litigation.

9 And so, that's kind of the point is
10 under the Rules of Procedure when someone propounds
11 discovery to me or if I think I have discovery that is
12 responsive -- admittedly, Your Honor, I don't even pay
13 attention to the people -- I ask for it specifically or
14 not. If I get stuff, I produce it. And, you know, I
15 do that with good reason.

16 And so a long story short here, but
17 when I produce it, I have to produce it under the
18 Rules of Procedure. It has to go to all other
19 counsel, and that's what I have done.

20 To the extent that there are -- so
21 walking through what she wants, No. 1: These
22 affidavits, I have never seen anywhere you can compel
23 somebody to create an affidavit. That's something
24 that should be done by deposition, and she will have a
25 full and fair opportunity to depose these clients at

1 some point, and it should be sooner rather than later.

2 So that kind of takes care of the first
3 issue of, you know, tell me what you want. Let's go
4 from there.

5 The next issue I think that she's
6 asking for is that all the recordings and everything
7 be collected and given solely to her. And presumably,
8 I can understand why she wants that.

9 These recordings, Your Honor -- and I
10 don't think you have had the opportunity to hear
11 them -- you can tell they come from an answering
12 machine. "Hello, hello, hello." That's the type of
13 recordings -- how these recordings start off.

14 And my understanding is that the
15 decedent had her answering machine set to pick up at
16 number -- on the second ring. And so these might have
17 been recorded -- might have been caught by the
18 answering machine to another recording device, and
19 then on to someone's I-phone and then on to someone's
20 computer and transferred like digital files often do,
21 transferred from one component to the next, to the
22 next, to the next, to the next, and on down the line.

23 But my understanding is that all of
24 these come from an answering machine.

25 And so the relief that she's seeking

1 here is, I want you to record -- I want you to
2 download all this evidence so you can give it solely
3 to me, and I will be the sole arbiter of whether or
4 not this is something that should be admissible or
5 not. And that's just not the way it works.

6 I think the Court has to hear these
7 recordings. And if the Court finds based on the
8 recordings that, okay, these recordings appear like
9 there is some huge conspiracy in some recording
10 equipment where you illegally wiretap and all this
11 other -- all these other allegations, then the Court
12 is in a position to make that decision.

13 But without hearing the recordings or
14 without developing the evidence, right now all we've
15 got is allegations.

16 I don't have any affidavits from Drina
17 saying I didn't consent to that recording. I didn't
18 hear any answering machine when I called on that
19 particular day. I don't have any affidavits from Carl
20 whose capacity seems to come in and out, depending
21 upon when it is convenient for them.

22 And I don't have any affidavits from
23 Carl saying, no, you know, if we were going through a
24 divorce at that time, but at that time, no, that's --
25 you know, I didn't consent to those recordings,

1 because it makes perfect sense.

2 I don't know if you've ever dealt with
3 any divorce clients. They record the heck out of each
4 other immediately when they are going through a
5 divorce. That's typically what -- the first thing
6 lawyers say is tape record your conversations with
7 your soon-to-be ex.

8 And so I don't have any -- there is no
9 evidence before the Court that Carl didn't consent.
10 And this idea of, well, Carl didn't have capacity,
11 she's berating him on several of these recordings
12 claiming you've got capacity.

13 You're chewing on your shirt because
14 that's what you've got; is that right?

15 MS. BAYLESS: Your Honor, I'm going to
16 object to him going into the substance of these
17 recordings. I mean, if the Court wants to do
18 something to make a determination about their
19 illegality, that's one thing; but he is disclosing,
20 again, the contents of illegal recordings.

21 THE COURT: And I think that's
22 defendants arguing at this point, so let's --

23 MR. FEATHERSTON: Fair enough,
24 Your Honor.

25 Well, then, the issue ultimately turns

1 down to this: Who makes the decision regarding
2 whether these are illegal recordings or not, Bobbie or
3 the Court? And I think the Court is in a much better
4 position than Bobbie is.

5 And so this idea of let's gather up all
6 the recordings and give them to Bobbie, that doesn't
7 work for me. Let's gather them up and submit them for
8 in-camera inspections, that is fine. Doing an agreed
9 protective order like -- and that's what I have
10 proposed in the past is -- I could see if these are
11 being posted on Facebook or posted on some blog or
12 sent out there to the general public, but for purposes
13 of this litigation and that's, to my knowledge, the
14 only way these have been used, and that's the only way
15 I have used them is disclosing them in this
16 litigation.

17 If they want to do some agreed
18 protective order -- I have done several of them in
19 trade secret cases where you basically come in and
20 it's like, look, you don't file this with the Court,
21 you don't do a transcript and file it for public
22 record. If it is these particular recordings that are
23 going to be filed with the Court, that is okay. We
24 can submit them for in-camera inspection. I'm okay
25 with that.

1 Doing a joint agreed protective order
2 where, look, guys, the stuff we're disclosing in this
3 particular case, we all think it's privileged and
4 confidential and we don't think it should be disclosed
5 anywhere else, that's what I proposed.

6 We intended to attach it as to
7 exhibits, but it wasn't. We have got several copies
8 of that. But doing a joint agreed protective order in
9 this particular case that says, look, what happens in
10 the courtroom stays in the courtroom with respect to
11 these things, and they're not going to be hearing our
12 grievances or recordings or things anywhere else, I'm
13 okay with that.

14 So -- but just giving them to Bobbie
15 and, okay, saying how do clients react, I have never
16 seen anyone even ask for that type of relief, and I
17 don't think it is anything that is contemplated under
18 any of these statutes. I certainly have not seen
19 anything under any of these statutes that says that's
20 the relief that she's entitled to.

21 I think there was one other thing that
22 she was asking for other than that they all be -- oh,
23 the last thing she is asking for is for you to make a
24 ruling on the evidence. It's a rule that this
25 evidence is inadmissible.

1 And so I don't think the Court is in
2 any position as we sit here today with the lack of
3 evidence actually before the Court to make an
4 evidentiary ruling.

5 And so, you know, to me, I think we can
6 get maybe two-thirds of the way here with just a --
7 with continuing discovery in this case and doing a
8 joint agreed protective order that says we're not
9 sending it out to the rest of the world.

10 But for purposes of this case, if you
11 want to submit it to the Court, don't file it as a
12 public record, submit it in-camera, things of that
13 nature. Mark it "confidential". Have Bobbie -- if I
14 produce something and she thinks it's confidential,
15 mark it "confidential." Send that in the letter. We
16 can create a running list. It makes much more sense
17 than what's being asked for and the relief that's
18 being asked for in this particular motion.

19 I've just never seen it before. I
20 don't see any rules. I don't see any authority.

21 THE COURT: Well, I think that -- I
22 think that that proposal makes a lot of sense to me.
23 No. 1, requiring an affidavit, I think you would be
24 better off proposing that because requiring the
25 affidavit to me is awfully one-sided. I think that

1 the interaction would be beneficial for you and for,
2 you know, the person being deposed or the affiant.

3 MS. BAYLESS: The key, Your Honor, is
4 that there would be some type of sworn presentation to
5 how this was done, when it was done, who did it, that
6 kind of says all of it.

7 THE COURT: Well, I think the
8 deposition would be better suited for that.

9 And then on the -- as far as the
10 illegality of these recordings, I think that that has
11 to be explored before you launch into collecting all
12 of this and delivering it, because I'm not convinced
13 that it is illegally obtained, and I'm not convinced
14 either way.

15 I think that if you guys could hold the
16 issue in abeyance until depositions can be taken and
17 more evidences is gathered, and then perhaps we have a
18 hearing or perhaps these recordings are submitted
19 in-camera, I think that's a better way to go about
20 this as opposed to, essentially, you know, ruling
21 today that they are inadmissible, that they were
22 illegally obtained, and then require the defendants to
23 offer an affidavit. Because I think that the
24 affidavit he receives, you know, may not satisfy, you
25 know, what you're trying to do.

1 So I think that giving the deposition,
2 we can dig a little deeper and you can get a little
3 more clarification. So I like the idea of a joint
4 agreed protective order.

5 MS. BAYLESS: Well, the problem is --
6 Judge, the problem is, I'm not comfortable consenting
7 on my client's behalf or having my clients consent
8 that these can be disclosed any further than they
9 already have been.

10 I mean, I think if I'm right -- and I
11 understand that the Court doesn't want to
12 pre-determine that -- but if I'm right, there have
13 already been problems in that they have been disclosed
14 to other parties. And to say, oh, I agree that can
15 keep going on while we sort through this --

16 THE COURT: No, I think -- I wouldn't
17 envision that. I mean, I would envision that these
18 recordings would be protected. I mean, that's why I
19 imagine it would be called a joint agreed protective
20 order, because it would protect that from further
21 dissemination. Am I right?

22 MR. FEATHERSTON: I think the
23 discrepancy -- and let me just connect the dots -- I
24 think what she's saying is I can't produce it to Amy
25 and Carole. And Carole can't produce items to Anita

1 and Amy. And so that's what I think Bobbie is really
2 arguing for is she doesn't want us to be able to talk
3 amongst ourselves -- or she doesn't want us to be able
4 to exchange those among ourselves. She wants them to
5 go solely to her and -- is that a fair statement?

6 MS. BAYLESS: Well, I think there are
7 two kinds of recordings here. There are the
8 recordings where that's already happened, and it is a
9 little bit harder to put that horse back in the barn.
10 And, frankly, they probably all have what they each
11 have, but I don't know. And I don't want somebody
12 to -- on down the road say, well, of course, we
13 exchanged those things because you -- that was part of
14 our agreed protective order.

15 So to the extent that's already been
16 done and those recordings have been sent and these
17 people have them, that is just something they are
18 going to have to deal with.

19 To the extent there are other
20 recordings -- and, see, this applies literally to the
21 deposition. I don't know who has gotten what from
22 whom at what time. And so to say, well, yeah, you
23 know, spread those all around now. They will be
24 saying, well, that was done during the protective
25 order period and that kind of thing.

1 So that's why I'm saying if there are
2 other recordings -- and I have asked for all of the
3 recordings and the original media that they were
4 recorded on so we can see what has been done without
5 the editing -- then I'm saying those should not be
6 disseminated even to the other parties in this case
7 until this issue is addressed.

8 THE COURT: You know, I think I agree
9 with that, and so I think that makes sense. So if the
10 recordings have already been disseminated among the
11 defendants, you know, before today, there is no way
12 to, as you say, put that horse back in the barn. But
13 in the future, until there is a determination as to
14 the legality of those recordings, I don't think that
15 they should be disseminated among the attorneys.

16 MR. FEATHERSTON: So, Your Honor, I
17 guess the issue I have with that is how do I know?

18 THE COURT: Right.

19 MR. FEATHERSTON: I mean, basically,
20 what your ruling is is now I'm in jeopardy for all
21 recordings, because now like -- how do I say, you
22 know, hey, Neal, do you have this recording or -- you
23 know, that's where there is a disconnect.

24 There is no way for me to be able to --
25 because then when I disclose -- I mean, you're going

1 to find out whether or not someone has a recording.
2 Have you heard this particular recording? I mean,
3 that seems like a dangerous ground to me.

4 And so I think the ability to sit here
5 and, you know, exchange within this group, I think
6 that's okay. I mean, I don't know that any other
7 lawyer is going to be out there disclosing anywhere
8 else because the lawyers are subject to the joint
9 protective order as well.

10 And so I don't see the harm while
11 you're in litigation -- and there's a bunch of, you
12 know, litigation privileges that are associated with
13 it, I'd have to go back to my office and find some of
14 them, but I'm sure I could -- I don't know how I could
15 find out has this been disclosed on your side or not.

16 And it certainly puts us at a
17 disadvantage. I mean, it just -- that doesn't seem
18 like a workable solution.

19 Essentially, what your ruling would be
20 is, any recordings you got, you need to, one, assume
21 that they are illegal; and two, not produce them to
22 anybody else. And I can't do that.

23 I mean, there is no showing that these
24 are illegal. And if I feel like there is one that is
25 illegal, then maybe at that point I will, you know,

1 tread more carefully.

2 But at this point, I think I need to be
3 able to communicate effectively with the other defense
4 counsel, as well as the plaintiff's counsel and the
5 pro se plaintiff we have in this case, and produce
6 those documents or risk, you know, not being able to
7 use what the Court finds later that, oh, no, it's not
8 illegal, these are okay.

9 Now, all the other defendants are at a
10 disadvantage just because maybe my client keeps better
11 records than theirs do.

12 THE COURT: Well, and that makes sense
13 to me, you know, so --

14 MS. BAYLESS: Well, all he has to do,
15 Your Honor, is not give them to anyone else. We know
16 what he sent around to everybody else, and frankly,
17 Ms. Curtis turned those copies over to me because she
18 was not comfortable even having them.

19 THE COURT: But I guess what he is
20 saying is going forward if he receives something, then
21 he's not able to really supplement his discovery
22 either.

23 MS. BAYLESS: Well, when are we really
24 going to try this case? I mean, we don't even get --
25 the temporary administrator has six months to look at

1 it. I am not suggesting that he's going to miss a
2 deadline or something if we deal with this issue.

3 And in the interim, he doesn't
4 disseminate these recordings, whatever he may get, it
5 would be fine with me. And if he doesn't, he can
6 possibly not disseminate them to me, either. I mean,
7 I have not had them for 38 months. I got them a month
8 ago so, you know, that's not hard. I don't see that
9 it is hard at all.

10 He's already sent around these. We
11 know that he sent those around. If he is saying that
12 he's been busily, since he got my motion, sending them
13 to everybody that he could so that they would already
14 be out there, then I guess we will have to sort that
15 out.

16 But if it is a question of he is not
17 supposed to give them to any other third parties until
18 a determination is made about this, then I don't see
19 what's hard about that, that isn't putting him at any
20 kind of a disadvantage.

21 It is not suggesting what can or cannot
22 be admitted in trial because we're not near a trial.
23 We're not -- I mean, I know we have a docket control
24 order, which no longer has much meaning or anything.
25 We're supposed to be here today on a deadline on

1 summary judgment, so we are not.

2 So it seems like a simple matter to
3 say, okay, I've got to put the brakes on anybody else
4 receiving these recordings until we get to the bottom
5 of the nature of the recordings.

6 MS. BEDUZE: Your Honor, I just want to
7 make sure I'm understanding.

8 It is my understanding that these
9 recordings have not been disseminated to any third
10 party. They have been disseminated to counsel and --
11 but to these five individuals and their respective
12 clients.

13 THE COURT: Right.

14 MS. BEDUZE: So any suggestion to
15 otherwise, I would take issue with.

16 And we do not believe -- it would be
17 very perfect for us to try to agree to a protective
18 order that protects the dissemination of the
19 recordings that have already been exchanged, produced,
20 pursuant to part of discovery, and any additional
21 recordings that may come to light that, you know,
22 through the act of discovery.

23 And, I mean, in order to conduct the
24 discovery, in order to take different depositions,
25 which Ms. Bayless is wanting to take certain

1 depositions in lieu of the affidavit that she was
2 originally requesting in front of you today, these
3 recordings will need to be produced so that everyone
4 can know and properly prepare for those depositions in
5 which the recordings will be -- the information and
6 the details of the recordings will be further delved
7 into.

8 And so that end, my client, before
9 retaining Crain, Caton & James, she did, in fact, give
10 her deposition. And it is my understanding she
11 responded as a pro se individual to over 300
12 production requests.

13 So the fact that discovery has not gone
14 forward, and the fact that information has not been
15 given freely, that's false with respect to my client,
16 Carole, in that she has responded to that discovery,
17 and we have supplemented when we have information.

18 But, again, Carole is only in this
19 lawsuit as the beneficiary of the trust. She is not a
20 trustee. And so, you know, it is the role of all the
21 parties, no matter which side they're on, is to freely
22 exchange information. And to hinder -- and I believe
23 that stopping the recordings from being exchanged by
24 all parties would hinder the ability to move
25 forward -- to move this case forward.

1 I know they were down here two weeks
2 ago, and I believe getting Mr. Lester appointed will
3 further move this case forward. But in order to deal
4 with things, we need to have a free exchange of
5 information.

6 THE COURT: Okay. I have a meeting at
7 12:15, so I've got to get going. And I apologize, I
8 should have said that earlier.

9 But let's work on an agreed protective
10 order. I think it is difficult to restrain only the
11 dissemination of these recordings among the attorneys.

12 And future recordings that have not
13 already been disseminated, it might be a good idea for
14 the attorneys just to have a hearing on it and get a
15 determination whether or not it should be disseminated
16 at that point. I don't know how many recordings there
17 are, but --

18 MS. BAYLESS: I don't either.

19 THE COURT: What's that?

20 MS. BAYLESS: I don't know either.

21 Let me just say, Judge, I'm not going
22 to enter into an agreed order that says those
23 recordings can be disclosed to anyone. I just don't
24 think I can do that.

25 THE COURT: Well, when you say third

1 parties, you're referring to anyone but the attorney
2 who is in the suit as a legal attorney. I mean, third
3 parties mean other than the defendants' attorneys and
4 defendants?

5 MS. BAYLESS: Other defendants'
6 attorneys in this case and other defendants, yes,
7 that's what I mean. I don't mean other than those. I
8 mean, those who are --

9 THE COURT: I'm just trying to clarify
10 because Ms. Beduze said, you know, she took issue with
11 the suggestion that these videos and recordings were
12 being disseminated to third parties. I think that
13 there was a missed communication about those third
14 parties --

15 MS. BEDUZE: Correct. I will use the
16 term "third parties" to be, you know, outside of the
17 individuals involved in the lawsuit.

18 MS. BAYLESS: You know, I have
19 absolutely no idea.

20 THE COURT: Well, let's work on a
21 draft. Can we get the draft of a joint agreed
22 protective order started, and see if you guys can come
23 up with some sort of an agreement?

24 Otherwise, I mean, is there something I
25 can rule on right now? I mean, is there something you

1 want guidance for other than this issue of how to deal
2 with these recordings, because I don't have the answer
3 to that. I don't know if there are even -- we could
4 be displacing our findings cause all of the recordings
5 have been produced, I don't know.

6 MS. BAYLESS: I think that's unlikely,
7 Your Honor. But the problem -- here is the problem.
8 While we explore these issues in depositions or
9 however we explore them, if there is no constraint on
10 their providing these documents -- of these recordings
11 to other people, whether it is Carole sending her
12 video recordings to Anita and Amy as she already did,
13 and that's -- and so if Anita produced them, Carole
14 didn't. She says Carole has provided all this
15 discovery. Carole didn't provide those.

16 So unless there is some kind of
17 constraint that there is to be no disclosure other
18 than if -- other than Mr. Featherston talked about, he
19 might be able to get a list of whom they have been
20 provided to and when and that kind of thing. But
21 without knowing, there may be -- the size of this
22 recorder, there could be hundreds of hours of
23 recordings.

24 And so without knowing what there is,
25 without having the original means, without knowing any

1 of that, and until we know that, there is nothing
2 preventing them from passing this around everywhere.

3 They obviously are not concerned about
4 the statutes that prohibit it. And so unless this
5 Court directs that those are not to go anywhere until
6 we make a determination, and we establish a time
7 period to make that determination, I just -- I
8 cannot --

9 THE COURT: Okay. I think this is
10 what -- this is my solution, I think, the best that we
11 can come up with, sign a temporary order on it until
12 an agreed protective order can be entered.

13 MS. BAYLESS: And the temporary order
14 will --

15 THE COURT: It will expire at some
16 point, and then we'll have a hearing when it expires,
17 you know, the sooner the expiration date of the
18 protective order or the date that a joint agreed
19 protective order is entered. Does that make sense?

20 MS. BAYLESS: And the terms of this
21 temporary order will be what?

22 THE COURT: I don't know that. I would
23 have to go work on it. And then I'm assuming you guys
24 can review and comment, and then I would enter it.
25 And then, hopefully, you can come up with an agreed

1 order that would be better suited for the case. But
2 until then, that's the only solution I can think of.

3 MR. SPIELMAN: Judge, if I may, I think
4 whether it's in the temporary order or whether it's
5 something that we can work on after that point, it can
6 be maybe a stair step.

7 But I think what counsel has been
8 saying about the need for the attorneys to be able to
9 exchange so that, in theory, we can prepare our
10 clients for, one, we can make sure that there are not
11 any other recordings other than those that have
12 already been exchanged. We need that part.

13 And then, two, I think what I heard a
14 little bit of if -- if the concern is that, well, did
15 Carl consent? Well, was Carl competent? That could
16 be the second stage of people that need to hear these
17 recordings.

18 I don't know how you determine his
19 competency back then, but perhaps it is a professional
20 who can hear the recordings and make some kind of
21 determination.

22 I'm not saying that's the direction
23 this goes, but it seems if the excuse -- if the
24 defense is going to be that Carl was incompetent, and
25 therefore, could not consent, we cannot have our hands

1 tied behind our back with regard to who can assist in
2 either -- in evaluating that --

3 THE COURT: Okay. Well, that may be
4 appropriate for the agreed protective order, so -- but
5 as far as my temporary order is concerned, I'm not
6 going to make it that complicated. So I don't -- I
7 really don't know what I'm going to do at this point,
8 but I'm going -- I will draft something up and you
9 guys can comment on it. I don't want to mess things
10 up for you, but I do think that it is appropriate to
11 protect the dissemination of this information in the
12 meantime so that we can get the issue resolved.

13 MS. BEDUZE: And, Your Honor, if you
14 would -- I do believe we have a copy if you would like
15 to see or hear the recordings that is --

16 THE COURT: Not yet.

17 I've got to go. I'm already late.

18 (CONCLUSION OF PROCEEDINGS.)

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1 STATE OF TEXAS ::

2 COUNTY OF HARRIS ::

3 I, JUDITH J. KULHANEK, Deputy
4 Official Court Reporter in and for Probate Court No. 4
5 of Harris County, Texas, do hereby certify that the
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings
8 requested by counsel for the parties to be included in
9 this volume of the Court Reporter's Record in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Court
13 Reporter's Record does not include any exhibits as
14 none were offered and/or admitted.

15 I further certify that the cost
16 for the preparation of this Court Reporter's Record is
17 \$ 260.00, paid by plaintiff, CARL BRUNSTING.

18 WITNESS MY OFFICIAL HAND on this,
19 the 18th day of August, 2015.

20

21

22 /s/ JUDITH J. KULHANEK
23 JUDITH J. KULHANEK, CSR #598
Deputy Official Court Reporter

24 MY COMMISSION EXPIRES:
25 DECEMBER 31, 2016