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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 CONFERENCE & MOTION FOR SANCTIONS
& MSJ & MOTION TO EXCLUDE
* * * * *

On the 25th day of February, 2022, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Kathleen Stone, Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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VOLUME 1

(Pretrial Conference & Motion For Sanctions & MSJ & Motion to Exclude)

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1 February 25, 2022

2 (WHEREUPON the following proceedings
3 were conducted via Zoom and YouTube:)

4 PROCEEDINGS:

5 THE COURT: Okay. We're here on a
6 pretrial, correct?

7 MR. SPIELMAN: We're here on a couple of
8 things, Your Honor. We are here on a pretrial that is
9 set for 3:00, but we're also here on a motion to exclude
10 testimony evidence and for sanctions and for third
11 contempt as to Ms. Curtis. I don't know that any of the
12 lawyers know in what order the Court wanted to address
13 those things.

14 MOTION FOR SUMMARY JUDGMENT RULING:

15 THE COURT: Well, I think the very first
16 thing I need to address is the Co-Trustees' summary
17 judgment. I've been in contact with Judge Horwitz, and
18 I've signed the motion for summary judgment.

19 MR. SPIELMAN: Thank you, Your Honor.

20 THE COURT: So, where are we now?

21 MR. SPIELMAN: Well, I guess I'll have to
22 ask the Court that question, too.

23 So, this pretrial, this pretrial order --
24 pretrial conference, Your Honor, has to do with the
25 lawsuit between Candace -- from Candace Curtis to the

1 Co-Trustees and the Co-Trustees' counterclaims against
2 Candace Curtis; if both have just been resolved by
3 summary judgment, then I believe the only pretrial
4 matters that would be left would involve the remaining
5 parties which would be Carole Brunsting, who is pro se,
6 Carl Brunsting, who is represented by Ms. Bayless, and
7 Ms. Curtis and whatever remaining causes of action and
8 claims exist between the three of them. But if the
9 summary judgment's been granted in its totality, then
10 Mr. Mendel and I probably don't need to participate in
11 the pretrial because our clients are now summary
12 judgment -- have now summary judgment in their favor;
13 does that sound right, Steve?

14 MR. MENDEL: That's true. The one thing
15 we would need clarification from the Court is the one
16 outstanding issue with regard to our clients is the fee
17 issue and any hearing regarding same. So, would the
18 Court be keeping the trial date to take care of the fees
19 or would we be looking at some potential earlier date?

20 THE COURT: The date is April -- I forgot.

21 MR. MENDEL: April 4th, Your Honor.

22 MS. SCHWAGER: Your Honor, I would just
23 point out that the Defendants have no cognizable claim
24 against my client; they simply ask for attorneys' fees
25 based upon on a new cause of action asserted. So, I

1 don't think there's anything to talk about there
2 regarding my client.

3 THE COURT: Well, Ms. Bayless?

4 MS. BAYLESS: Yes, Your Honor.

5 THE COURT: What would be tried -- or as I
6 understand it - your claim against the Co-Trustees has
7 been, by Rule 11 Agreement, kind of set aside?

8 MS. BAYLESS: Right, they've been severed,
9 yes.

10 THE COURT: And so, is this going to be --
11 I mean, is there anything to be tried on April the 4th
12 for you?

13 MS. BAYLESS: Well, Your Honor, I've been
14 trying to resolve the issues that -- the only issues
15 that would be there relate to claims that we filed
16 against Carole and claims that Carole raised in a
17 counterclaim. I've been trying to resolve those.
18 Carole is pro se, and she's going through some health
19 issues; and so, she wanted to delay, further, the
20 discussions. I don't know where that stands. She
21 wanted to have an attorney look at the proposed
22 dismissal that I had sent to her which was a joint
23 dismissal with prejudice, and then that timing was
24 dependent upon her health issues. So, I don't really
25 know where that stands, and I don't really know how to

1 answer that question. I think those claims should be
2 able to be resolved based on the discussions we've had,
3 but I don't have that resolution to give you today.

4 THE COURT: All right. Ms. Brunsting?
5 Carole?

6 MR. MENDEL: You're on mute, Carole.

7 THE COURT: You're on mute.

8 MS. CAROLE BRUNSTING: Yes. I got the
9 proposal to -- from Ms. Bayless about a week before I
10 was to have surgery; and because I'm pro se, it just
11 wasn't a decision I wanted to make at that time. And
12 then also, too, I just didn't feel it was a good idea to
13 sign anything without having an attorney look at it.
14 Unfortunately, my [audio interruption] got delayed; and
15 unfortunately, just because I've had to make so many
16 trips back and forth to M.D. Anderson and between work
17 and things like that, I just haven't had a chance --
18 well, no, actually what they did was they told me that
19 I'm supposed to minimize my exposure to anything at this
20 point because they don't want to have to delay the
21 surgery any longer. So, I can't go -- I've been unable
22 to go to meet with an attorney just to have them look at
23 this. So, that's what's causing the delay - is just
24 poor timing and all of this happening. So, I'm just,
25 like I said, I -- because I'm pro se, I'm just not

1 really comfortable just having something signed on --
2 for me to sign something without the benefit of having
3 an attorney review it. And I'm not trying to drag that
4 out, it's just, unfortunately, my focus is somewhere
5 else at this time. So, my best guess would be maybe in
6 the next -- I talked to an attorney this morning, would
7 be possibly in the next two weeks.

8 THE COURT: All right. Well, you might --

9 MS. CAROLE BRUNSTING: Just depends on how
10 fast my recovery goes and all of that.

11 THE COURT: You might ask the attorney to
12 contact - if you've decided to hire them - to contact
13 Ms. Bayless directly and then maybe if they had any
14 questions, she would be able to answer them.

15 MS. CAROLE BRUNSTING: Okay.

16 THE COURT: And then you might not even
17 have to go into their office for any reason.

18 MS. CAROLE BRUNSTING: Okay.

19 THE COURT: They should be able to look at
20 the document, talk to Ms. Bayless who's been in this
21 lawsuit - from what I understand from the beginning -
22 and answer any questions that your attorney might have.

23 MS. CAROLE BRUNSTING: Unfortunately,
24 since I'm talking to somebody that's brand new to all of
25 this, they're having a lot of questions, and they just

1 want a lot of background and all of this, so it's not
2 something that they're like - oh, sure, just send it
3 over, and I'll give you my opinion. So, it's just
4 gotten to be a lot more complicated than just making a
5 simple phone call to an attorney.

6 THE COURT: Okay. Well, that's just a
7 suggestion.

8 MS. CAROLE BRUNSTING: Okay. Yes, that's
9 a really good suggestion. So, maybe I can find someone
10 that's willing to do that.

11 THE COURT: All right. So, the attorneys'
12 fees that are for trial by the Co-Trustees, right? Is
13 that what I'm hearing?

14 MR. MENDEL: Yes, Your Honor. Yes, Your
15 Honor, we'd like to keep that April 4th trial date for
16 the issue of fees.

17 THE COURT: All right. I don't see any
18 reason why not. I'll expect it's probably not going to
19 take four days, five days.

20 MR. MENDEL: Well, we told the Court -
21 when we did the severance - this case would be reduced
22 down to a week. You're right - it's probably not going
23 to take a week, but at this moment it's still a jury
24 case, and maybe it gets turned into a bench case. But I
25 don't think we're at a position at this moment to say if

1 it's going to be less than the full week.

2 THE COURT: All right. Well, we'll just
3 keep it on the trial docket. I mean, Judge Horwitz was
4 expecting a trial, and we'll just leave it on the trial
5 docket for the 4th. So, a lot of the things that we
6 would do today as far as the docket con --

7 MS. SCHWAGER: Your Honor, if I may
8 interject? I'm rather sure that we're going to appeal
9 the granting of the summary judgment, and I would
10 suspect that's going to throw this April 4th trial date
11 off so --

12 THE COURT: Actually, it's the 14th not
13 the 4th.

14 MS. SCHWAGER: Oh, I see.

15 THE COURT: But go ahead.

16 MS. SCHWAGER: I don't know how long that
17 it would take the court of appeals to respond, but it is
18 an issue that affects the trial. So, I just wanted to
19 bring that to your attention.

20 THE COURT: Well, it probably will take
21 the court of appeals, I think, about between a
22 year-and-a-half to two years.

23 MR. MENDEL: Well, Your Honor, she can
24 just take up the MSJ along with the fees, so it's all up
25 before the court of appeals. She's not entitled to some

1 interlocutory appeal.

2 THE COURT: Well, for one thing, we need
3 to kind of get what's -- there's too much in the 401.
4 So, we're trying to - we, I mean the Court - is trying
5 to make sure that what is left is just the -- Ms.
6 Schwager's client's case so that that can go up to the
7 court of appeals. And then, if you want to include the
8 attorneys' fees, I think we are -- we talked about
9 trying to clear up or clean up - 'cause there's a 401, a
10 403, a 404, a 405 - and to go get the case in the two --
11 the 151st, bring it in and make it the 406.

12 JUDGE COMSTOCK: Judge, let me just chime
13 in.

14 When I spoke to counsel, you know, when we
15 first got started, I think we all reached an agreement
16 that the pleadings in the 151st could be brought down
17 and put into the 401.

18 THE COURT: Okay.

19 JUDGE COMSTOCK: And then I was, you know,
20 just thinking. I know that there's going to be a lot to
21 process here. We could -- I do have an opening the
22 Thursday before their April 4th trial setting, and we
23 can put in another pretrial conference to let people
24 kind of digest what's going on and decide what to do,
25 actually, at trial, but there are a lot of loose ends.

1 THE COURT: Okay. So, that would be
2 the -- what day would that be, April 1st?

3 JUDGE COMSTOCK: I'm sorry, March 31st.

4 THE COURT: March 31st, okay.

5 JUDGE COMSTOCK: And we could have a
6 pretrial that afternoon, maybe about 1:30 if that works
7 with the people's schedules.

8 THE COURT: Counsel?

9 MS. SCHWAGER: I'm available.

10 THE COURT: Does it work with everybody's
11 schedule?

12 MR. SPIELMAN: For right now, it does.

13 THE COURT: Okay.

14 MR. MENDEL: I'm available on the 31st.

15 THE COURT: Okay.

16 MS. BAYLESS: Fine with me, Judge.

17 Hopefully by that time, we'll have the issue sorted out
18 with Carole.

19 THE COURT: All right.

20 MR. SPIELMAN: I'll figure it out, Your
21 Honor.

22 THE COURT: All right. And, obviously,
23 Ms. Brunsting - you don't have to be there?

24 JUDGE COMSTOCK: You're muted.

25 MS. CAROLE BRUNSTING: So, I don't have to

1 be there because I'm not part of it at all?

2 THE COURT: I think that all we're talking
3 about in the trial is the attorneys' fees, correct?

4 MS. CAROLE BRUNSTING: I mean, so I have
5 no participation in that? That's what I'm asking. I'm
6 kind of a little bit lost in all of the severance and
7 how this is all panning out. So, I'm just asking - is
8 that something that I should be there for or I'm not
9 required to be there for or I'm not sure.

10 THE COURT: Well, let me ask the attorneys
11 if they think you're required to be there. Counsel?
12 Mr. Mendel?

13 MR. MENDEL: Well, she might want to be
14 there. I mean, it's possible, depending on how the
15 Court rules on our fees - off the top with regard to the
16 trust, are they off the top and apportioned as to Ms.
17 Curtis. So, Ms. Carole Brunsting might want to be
18 present because she may have an interest in how that
19 develops.

20 The other thing that's not clear to me,
21 Your Honor, is - and Ms. Bayless, maybe you can clarify
22 it - is right now, it appears to be fees and the bale --
23 Carl Brunsting, Carole Brunsting claims that are all
24 that's left that would be scheduled for trial. And if
25 Carl Brunsting and Carole Brunsting resolve their

1 issues, then we're just down to attorneys' fees.

2 MS. BAYLESS: I think that's right. As
3 far as I --

4 MR. MENDEL: Carole, long story short -
5 you have the right to be there; whether you want to be
6 there, is up to you.

7 MR. SPIELMAN: I think we'll all know a
8 little bit more when we see the actual order that got
9 signed on the summary judgment, too.

10 THE COURT: Okay. Well, it should be --
11 should pop up in the -- on the file online sometime
12 shortly.

13 MR. MENDEL: I'm online now; it hasn't
14 popped up yet.

15 THE COURT: Okay. Well --

16 JUDGE COMSTOCK: It's being processed
17 right now, so it should be up soon.

18 MR. SPIELMAN: And I suppose I have a
19 question for the Court which I don't know if the Court
20 will be able to answer.

21 Judge Comstock, when we spoke before we
22 went on the record, when the attorneys spoke before we
23 went on the record, and we discussed bringing the
24 district court cases into the 401 - is that still the
25 right decision in light of the summary judgment being

1 granted and what we're talking about today? Is it the
2 Court's intention that the summary judgment encompasses
3 the injunction proceeding?

4 THE COURT: The injunction was just to pay
5 fees, wasn't it?

6 MR. SPIELMAN: Well, the injunction that
7 we're talking about has a lot of different terms - one
8 of which is that, essentially paraphrased, nobody is to
9 spend any money out of the Trust without the permission
10 of the Court, and there are other things about it, of
11 course. And in the district court, the injunction was
12 filed as a final judgment, and it was argued that it
13 should be enforced as such almost like out of -- almost
14 like you would do collection of -- collecting of a
15 judgment. And so, I guess either I may have
16 misunderstand [sic] what that district court proceeding
17 was or I'm confused as to what happens now that it's
18 being brought over by -- now that it's a claim by Ms.
19 Schwager on behalf of Ms. Curtis being brought into the
20 401 in which the Co-Trustees have just been granted
21 summary judgment as to Ms. Curtis' claims.

22 MS. SCHWAGER: The injunction applied to
23 the entire Trust not just Ms. Curtis' claims.

24 MR. SPIELMAN: Well, right - that's my
25 point. So, I suppose that the injunction survives the

1 summary judgment to the extent that there are other
2 parties still in the case.

3 JUDGE COMSTOCK: If I can chime in.

4 It seems to me that because that was all
5 brought into the 401, that it would still be proper to
6 bring that piece of it into the 401 and deal with it all
7 as one animal, so to speak. So, I think I and Judge
8 Stone and Judge Horwitz would all be willing to consider
9 whatever counsel thinks is the best for y'all's case.

10 THE COURT: Well, if it's going to go up
11 on appeal, it should go up with the fees also. The fees
12 should go with it so there's not two different appeals
13 going on.

14 JUDGE COMSTOCK: So maybe bring it in and
15 then decide how you want it dealt with before pretrial
16 on the 31st, and then maybe it can all be addressed in
17 the same cause as part of the same process.

18 THE COURT: Okay. I think that sounds
19 about right of how it should proceed 'cause you don't
20 want two different courts of appeal - Fourteenth and the
21 First - handling bits and pieces of this case.

22 MR. MENDEL: That's fine, Your Honor.
23 Like Judge Comstock just said, you know, the parties can
24 figure out what they want to do, and it can be either
25 raised by motion before the 31st or at the time of the

1 31st pretrial hearing.

2 THE COURT: Okay.

3 MS. SCHWAGER: Your Honor, I would also
4 point out - the 404 is a Bill of Review, and it's never
5 been ruled upon; it's a challenge to the jurisdiction.
6 And even though I might have some idea as to how this
7 judge would rule, it's not been considered at this time.
8 And so, I believe --

9 THE COURT: Well, Judge Horwitz and I've
10 discussed that also; we'll get that ruled on.

11 MS. SCHWAGER: Okay.

12 THE COURT: I'll look at it, and he
13 obviously knows a lot more about it than I do.

14 MS. SCHWAGER: Sure.

15 THE COURT: Okay. Is there anything else?

16 MOTION TO EXCLUDE:

17 MR. SPIELMAN: Your Honor, just because we
18 are on the docket today on the motion to exclude, I
19 think that the Co-Trustees will pass that, pass that
20 hearing for today; and if it needs to be considered by
21 the Court again, we will ask if we can have it
22 considered at the next pretrial on March the 31st --

23 THE COURT: Okay.

24 MR. SPIELMAN: -- notice for that if we
25 decide to go forward.

1 THE COURT: Okay. Anything else?

2 MR. MENDEL: No, Your Honor.

3 THE COURT'S RULING:

4 THE COURT: Okay. We'll pass the motion.
5 We'll go get the case from the 151st, we'll put it into
6 the 401; we'll have a hearing on the potential trial on
7 the fees and do the -- is it the 404, Ms. Schwager?

8 MS. SCHWAGER: The 404.

9 THE COURT: 404. We'll look at the 404.
10 And I'll discuss it with Judge Horwitz.

11 Okay. So, does anybody need anything from
12 me?

13 MR. SPIELMAN: No, Your Honor.

14 THE COURT: Okay. Great. Thank you.

15 Oh, Bobbie, do you still have the
16 Christmas ornament place?

17 MS. BAYLESS: I'm sorry?

18 THE COURT: Do you still have the
19 Christmas ornament place?

20 MS. BAYLESS: Yes. Yes.

21 THE COURT: There was always cute things
22 in there.

23 MS. BAYLESS: Yeah, it's hard to do
24 everything. I'm trying, but..

25 THE COURT: Okay. Thank you, counsel,

1 y'all are excused.

2 MS. BAYLESS: Thank you, Judge.

3 MR. MENDEL: Thank you, Judge.

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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 CURTIS.

19 WITNESS MY OFFICIAL HAND this the 3rd day of
20 March, 2022.

21
22 /s/ Hipolita G. Lopez
23 HIPOLITA G. LOPEZ, Texas CSR #6298
24 Expiration Date: 10-31-23
25 Official Court Reporter
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