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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-403

APPELLATE COURT NO. 01-22-00378-CV

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

* * * * *
STATUS CONFERENCE REQUEST BY MR. CORY REED
* * * * *

On the 4th day of November, 2021, 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

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VOLUME 1

(Status Conference Request by Mr. Cory Reed)

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1 November 4, 2021 (WHEREUPON the following
2 proceedings were conducted via
3 Zoom and YouTube:)

4 PROCEEDINGS:

5 THE COURT: We're going to go on the
6 record. This is Case Number 412249-403; In The Estate
7 of Nelva Brunsting. This is a status conference,
8 essentially, set by (AUDIO INTERRUPTION) -- is somebody
9 playing YouTube? Okay. I thought I heard that.

10 For the record, let's have each attorney
11 make an appearance and tell the Court who you represent.
12 Let's start with Ms. Bayless.

13 MS. BAYLESS: Bobbie Bayless, Your Honor,
14 I represent Carl Brunsting.

15 MR. MENDEL: Steve Mendel representing
16 Anita Brunsting.

17 MR. REED: Judge, Cory Reed representing
18 Candace Kunz-Freed and the Law Firm of Vacek & Freed,
19 PLLC.

20 MR. SPIELMAN: Good morning, Judge, this
21 is Neal Spielman, and I represent Amy Brunsting in her
22 various capacities in this litigation.

23 MS. SCHWAGER: Candice Schwager, I
24 represent Candace Curtis.

25 THE COURT: All right. And I have Ms.

1 Candace Kunz-Freed - that's your law -- that's your
2 client, right, Mr. Reed?

3 MR. REED: Yes, Judge, my client is
4 present.

5 THE COURT: Okay. And you set this
6 matter, right?

7 MR. REED: Yes, Judge, I did; and I can
8 briefly go into it with you.

9 STATUS CONFERENCE

10 STATEMENTS BY MR. REED:

11 MR. REED: As you're aware, this Court has
12 abated the malpractice portion of this dispute; that
13 abatement has been pending since August 13th of 2020.
14 In your order, you stated that the case is abated until
15 after you issued a ruling on Carl Brunsting's partial
16 motion for summary judgment.

17 The briefing related to Mr. Brunsting's
18 motion for summary judgment was submitted by all the
19 parties on September 25th, 2020; it has been pending
20 since that time; that's 405 days that we've been waiting
21 for this portion of the case to be decided.

22 As the Court is fully aware, the lawsuit
23 against my client has been pending for almost 10 years.
24 The case itself has been quasi-abated since 2015 after
25 Carl Brunsting resigned as executor. We've asked this

1 Court, on several occasions, to allow the case to
2 proceed forward.

3 And so, after almost a year of the case
4 being -- waiting for a ruling on a motion for summary
5 judgment, after six-plus years of waiting to proceed
6 forward, I thought the only way to find out what the
7 status of -

- 8 1. The underlying case is and;
 - 9 2. The status of your ruling
- 10 - is to request a status conference.

11 So, that's where we stand, Judge. Just
12 trying to figure out how much longer you intend to, I
13 guess, abate the malpractice case, that way I can advise
14 my client accordingly.

15 THE COURT: Any other lawyer wish to speak
16 on this subject?

17 MR. MENDEL: Neal, do you want to speak to
18 what's pending on our side and shed some light?

19 STATUS CONFERENCE

20 STATEMENTS BY MR. SPIELMAN:

21 MR. SPIELMAN: Sure, if it will help Mr.
22 Reed and the Court.

23 It's true that Ms. Bayless filed a motion
24 for partial summary judgment. Since that time, a number
25 of different things have happened in the case including

1 we were able to actually get a trial date from the
2 Court, and so we are set for trial in 2022, April of
3 2022. And I believe we have a docket control order. I
4 might have to yield back to Mr. Mendel to confirm if it
5 was ever actually signed or not, but I believe it's been
6 submitted with either an agreed set of dates or mostly
7 an agreed set of dates. I can't recall if all of the
8 parties weighed in with either being agreed or opposed
9 or what as to the docket control order.

10 Anyway, the point being, Judge, is that
11 we're up and running, we have structure, and we're
12 moving forward with this case.

13 There will be -- just as Ms. Bayless has
14 her motion for partial summary judgment on file, we have
15 a motion for summary judgment that will be filed shortly
16 that will give this Court the opportunity to do anything
17 from resolving the entirety of the case to granting a
18 partial summary judgment on certain issues to narrow the
19 scope and focus on what it is we actually need to speak
20 to the Court and the jury about at trial.

21 And I guess the only other thing that I
22 would say that sort of dovetails into Mr. Reed's
23 position is - as I understand, the litigation that was
24 initially filed by Carl Brunsting when he was the
25 executor of the estate is, essentially, colloquially, at

1 least, a -- an attorney-malpractice action based off of
2 several trust documents that were written and executed
3 that are also the subject matter of our litigation in
4 the base case, those documents being challenged as
5 valid, enforceable, et cetera. So, nobody will really
6 know whether or not attorney malpractice was committed
7 until we know whether or not those documents are
8 properly written, and that issue requires our case to be
9 resolved before Mr. -- before Mr. Reed's case can be
10 resolved, if that makes any sense the way I said that.

11 THE COURT: Well, even if I deny the
12 motion for partial summary judgment, it doesn't, it
13 doesn't dispose of the malpractice case.

14 MR. SPIELMAN: Well, it depends which
15 summary judgment you're referring to as a potential
16 denial. If you're referring to Mr. Reed's summary
17 judgment - of course, that's true. If you're referring
18 to Ms. Bayless' summary judgment - yes, that is also
19 true. Ms. Bayless' summary judgment doesn't address the
20 enforceability of the documents, but our summary
21 judgment will address the enforceability, essentially,
22 stating that they are legally enforceable.

23 THE COURT: Why is it that you are -- Ms.
24 Bayless' client filed this MSJ, I think, sometime in
25 July of 2015; is that correct?

1 MR. SPIELMAN: I don't recall the exact
2 date; but, yes, Judge.

3 So, her motion for summary judgment - I
4 don't want to speak for her - is, essentially, about one
5 portion of the case where the alleg -- so, the overall
6 litigation, as I understand it, is either if one segment
7 of it is - were debts [sic] or distributions made to
8 some siblings but not to Carl Brunsting and was that
9 proper or improper? That issue, I believe, is what is
10 the subject of Ms. Bayless' partial motion for summary
11 judgment. That issue -- that motion was filed, and Amy
12 and Anita - through Mr. Mendel's office and mine - we
13 filed our response; and I think Mr. Reed is correct in
14 saying that those issues are fully briefed and in front
15 of the Court.

16 The other topic, the other big issue in
17 this case is the documents themselves, the ones that
18 were drafted by Vacek & Freed and executed by the
19 Decedent, Nelva Brunsting, that are being contested in
20 one form or fashion by Carl Brunsting and/or Candace
21 Curtis. Those issues - the enforceability - from a
22 legal perspective, as well as from a factual
23 perspective, those have never been presented to the
24 Court, yet, through a summary judgment. We will present
25 those issues in our motion, and then the parties will be

1 able to file a brief, however they wish to, in response.
2 I would expect, Your Honor, that Mr. Reed might even
3 file something along the lines of an amicus-type brief
4 once he sees that motion because it will educate the
5 Court in a way that will help it -- help the Court
6 ultimately deal with the claims against Mr. Reed's
7 client --

8 THE COURT: And will you --

9 MR. SPIELMAN: -- the overlapping issues
10 about these two cases that we've spoken about,
11 essentially, every time it's come up.

12 STATUS CONFERENCE

13 STATEMENTS BY MS. BAYLESS:

14 MS. BAYLESS: And, Judge, if I could speak
15 to what Mr. Spielman just said.

16 There's another portion of my motion for
17 partial summary judgment that relates to interpretation
18 of the documents. And as I recall the Court's ruling at
19 the time that the briefing schedule was set up to allow
20 people to reply, yet again, many months later to my
21 motion for partial summary judgment - you indicated that
22 there weren't going to be any other motions for summary
23 judgment allowed until you ruled on my motion for
24 partial summary judgment. And I think, in part, that
25 was because it does include questions about

1 interpretation of the instruments themselves. So, I
2 still think, you know, we're in a posture where we need
3 the Court's ruling on that motion for partial summary
4 judgment, and --

5 THE COURT: Ms. Bayless, on the -- your
6 partial motion for summary judgment about the validity
7 of the QBD - I think that's the main thrust of your
8 motion; is that right?

9 MS. BAYLESS: Well, there are two thrusts.
10 Mr. Spielman is right - there is a portion that relates
11 to some improper stock transfers - what we allege are
12 improper stock transfers. And then there is a portion
13 that is basically seeking a ruling on declaratory relief
14 about the interpretation of the documents.

15 THE COURT: And would you agree with me,
16 hypothetically, that if the QBD was valid, that in and
17 of itself doesn't make the claims of breach of fiduciary
18 duty go away.

19 MS. BAYLESS: I do agree with that, Your
20 Honor.

21 THE COURT: Those can still exist based on
22 disbursements to some beneficiaries and not to others.

23 MS. BAYLESS: Right.

24 THE COURT'S RULING:

25 THE COURT: All right. Well, gentlemen

1 y'all - and ladies - y'all have been more than patient
2 with the Court. I will commit to giving you a ruling
3 within the week.

4 MS. BAYLESS: We appreciate that, Your
5 Honor.

6 THE COURT: There's been a lot of things
7 going on in the court. I'm not going to spend too much
8 time other than trying not to fall on my sword any
9 deeper than I already have, and I will -- I'll get back
10 with you.

11 MR. REED: Thank you, Judge.

12 MS. BAYLESS: Appreciate it, Judge.

13 MR. SPIELMAN: Thank you, Your Honor.

14 THE COURT: Is there anything else right
15 now?

16 MR. SPIELMAN: Not on the record, but I
17 might like to talk to Mr. Reed about that beard he's got
18 going.

19 THE COURT: Well, you can do that off the
20 record.

21 Ms. Schwager, how are you doing?

22 MS. SCHWAGER: I'm fine, Your Honor, thank
23 you for asking.

24 THE COURT: Good to see you.

25 MS. SCHWAGER: Good to see you.

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THE COURT: All right. Y'all take care.

MR. MENDEL: Thank you, Judge.

MS. BAYLESS: Thank you, Judge.

THE COURT: Bye-bye.

* * * * *

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 \$120.00
18 and will be paid by MS. CANDICE SCHWAGER.

19 WITNESS MY OFFICIAL HAND this the 23rd day of
20 June, 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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