

NO. 412,249-401

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|---------------------------------------------|---|----------------------|
| CARL HENRY BRUNSTING, | § | IN PROBATE COURT |
| INDIVIDUALLY AND AS | § | |
| INDEPENDENT EXECUTOR OF THE | § | |
| ESTATES OF ELMER H. BRUNSTING | § | |
| AND NELVA E. BRUNSTING | § | NUMBER FOUR (4) |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING f/k/a | § | HARRIS COUNTY, TEXAS |
| ANITA KAY RILEY, individually, | § | |
| as attorney-in-fact for Nelva E. Brunsting, | § | |
| and as Successor Trustee of the Brunsting | § | |
| Family Living Trust, the Elmer H. | § | |
| Brunsting Decedent's Trust, the | § | |
| Nelva E. Brunsting Survivor's Trust, | § | |
| the Carl Henry Brunsting Personal | § | |
| Asset Trust, and the Anita Kay Brunsting | § | |
| Personal Asset Trust; | § | |
| AMY RUTH BRUNSTING f/k/a | § | |
| AMY RUTH TSCHIRHART, | § | |
| individually and as Successor Trustee | § | |
| of the Brunsting Family Living Trust, | § | |
| the Elmer H. Brunsting Decedent's Trust, | § | |
| the Nelva E. Brunsting Survivor's Trust, | § | |
| the Carl Henry Brunsting Personal | § | |
| Asset Trust, and the Amy Ruth Tschirhart | § | |
| Personal Asset Trust; | § | |
| CAROLE ANN BRUNSTING, | § | |
| Individually and as Trustee of the | § | |
| Carole Ann Brunsting Personal Asset Trust; | § | |
| and as a nominal defendant only, | § | |
| CANDACE LOUISE CURTIS | § | |

NOTICE OF APPEAL

This Notice of Appeal is filed by CANDACE LOUISE CURTIS, who seeks to alter the trial court's judgment or other appealable orders entered in the above

titled cause No. 412,249-401, and all matters filed as ancillary to “Estate of Nelva E. Brunsting, DECEASED No. 412,249”;

RELATED PROCEEDINGS:

CAUSE NO. 412,248 Estate of Elmer H. Brunsting, DECEASED

CAUSE NO. 412,249 Estate of Nelva E. Brunsting, DECEASED

CAUSE NO. 412,249-402: Candace Louise Curtis vs Anita Brunsting, Amy Brunsting and Does 1-100 filed U.S. District Court Southern District of Texas No. 4:12-cv-592 on 2/27/2012;

CAUSE NO. 412,249-403: Carl Henry Brunsting Independent Executor Of The Estates Of Elmer H. Brunsting And Nelva E. Brunsting Vs Candace L. Kunz-Freed And Vacek & Freed PLLC f/k/a THE VACEK LAW FIRM filed 164th Judicial District Court of Harris County, Texas January 29, 2013 and Transferred to Probate Court April 4, 2019 by Order of the Probate Judge dated February 14, 2019.

CAUSE NO. 412,249-404: Plaintiff Candace Louise Curtis Statutory Bill of Review of the Order dated February 14, 2019 denying Candace Curtis’ Plea to the Jurisdiction.

CAUSE NO. 412,249-405: The style of 412,249-405 is unclear but would appear to be similar to 412,249-401, without “Plaintiff Estate of Nelva Brunsting”, without

Defendant/Counter-Plaintiff Carole Brunsting and without Plaintiff / Nominal Defendant / Counter Defendant Candace Curtis.

Candace Louise Curtis appeals the trial court's denial of her Plea to the Jurisdiction and failure to dismiss all matters filed ancillary to the closed estate of Nelva Brunsting; appeals the trial court's issuance of sanctions in an amount below the review threshold, appeals the trial court's groundless entry of summary judgment and all orders entered in all matters filed as ancillary to the closed estates of Elmer H. and Nelva E. Brunsting.

Candace Louise Curtis' Ground for appeal includes the following:

- A. *Without a pending estate administration a statutory probate court lacks subject matter jurisdiction over matters otherwise ancillary.*
- B. *The Independent Executor violated the wills and had no authority under statute, to file non-probate related civil tort claims in the probate court after the inventory, appraisal and list of claims had been approved, the pour-over had been completed and the estates dropped from the active docket.*
- C. *Tex. Est. Codes 32.005, 32.006, 32.007 cannot be taken out of the context of Title II and there is neither a pending estate administration nor a successor to the independent executor that ceased to serve due to want of intellectual capacity.*
- D. *Curtis vs. Brunsting, Registration of Foreign Judgment in the Harris County District Court cannot be made nugatory by the probate court.*
- E. *The void remand was improperly entered as a transfer order and both acts are void ab initio.*

- F. *Proper notice was not given and former Judge Kathleen Stone lacked the authority to sign the February 25, 2022 Order.*
- G. *Judge Kathleen Stone signed the summary judgment order February 25, 2022, but failed to render judgment at the pretrial conference where summary judgment was announced.*
- H. *The Defendant, alleged CO-TRUSTEES', Summary Judgment Motion was vague and untimely and patently groundless under fundamental trust law, groundless under property code statutes, and fails to state the standard or meet the burden of proof for summary judgment.*
- I. *The summary judgment order is self-defeating as it identifies numerous disputed issues of material fact and holds Defendants own fiduciary disclosures to lack authenticity.*
- J. *The alleged CO-TRUSTEES' Motion for Summary Judgment fails to identify each element of PLAINTIFF'S causes of action upon which they seek judgment as a matter of law and for which they allege there is no evidence.*
- K. *There was ample evidence in the record that the alleged CO-TRUSTEES violated fiduciary duties owed to Plaintiff Candace Cutis; converted beneficiary CURTIS' interest to their own use and benefit, and according to their own alleged 8/25/2010 QBD, have comingled personal assets with fiduciary assets, remained in wrongful possession of Candace Curtis property and committed fraud throughout more than ten years of threats, intimidation and attrition tactics while failing to even perform the first obligation commanded of them at the passing of Nelva Brunsting under Section D of Articles VIII and IX.*
- L. *The probate Court failed to issue declaratory judgment declaring the January 12, 2005 Restatement, as amended September 6, 2007, to be the only active trust instruments; failed to declare the August 25, 2010 Qualified Beneficiary Designation (hereinafter 8/25/10 QBD) void and severable from the trust and that the in Terrorem clause contained therein offends public policy.*
- M. *The alleged Co-Trustee Defendants were in perpetual breach of trust for more than seven years and in perpetual violation of a federal preliminary*

injunction for more than six and one half years when they filed their “original Counter claims”. The doctrine of unclean hands estops the alleged Co-Trustees from such disloyal conduct.

- N. The challenged Orders violated CANDACE CURTIS’ Constitutional right to due process, notice and a meaningful opportunity to be heard*
- O. There is no evidence that CANDACE CURTIS violated the “no contest” provision of the 2005 restatement of the BRUNSTING FAMILY LIVING TRUST. It is the alleged Co-Trustee DEFENDANT’s burden of proof to establish the what, when where and how CANDACE CURTIS is claimed to have violated a “no contest” provision of the 2005 restatement.*
- P. The Summary Judgement Order fails to specify the primitive elements necessary for any summary judgment, whether no-evidence or traditional.*
- Q. Defendant, Alleged co-Trustees, have failed to establish the existence of an active trust, as there is No-Evidence of affirmative fiduciary performance, and forfeiture clauses cannot be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a trust.*
- R. Attorneys’ fees may not be granted in Texas absent a contract or statute authorizing attorneys’ fees.*
- S. The Court erred in ruling that Candace Curtis is liable for the alleged Co-trustees’ attorneys’ fees or that the alleged Co-trustees’ attorneys’ fees shall be taken out of CANDACE CURTIS’ property interests, as Candace Curtis share vested at the passing of Nelva Brunsting 11/11/2011, and was neither alienable nor subject to claims of judgment creditors. Having plead so in Anita’s third set of attorneys first pleading on December 5, 2014, the alleged Co-trustees’ are estopped from arguing the contrary without an admission that they are challenging the settlors’ intentions and thereby violating the very in Terrorem provisions the project onto trust beneficiary and de jure trustee Candace Curtis.*

This appeal is being taken to the 1st or 14th Court of Appeal in Houston.

Appellant Candace Louise Curtis reserves the right to amend this Notice of Appeal.

Respectfully submitted,

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ATTORNEY FOR CANDACE LOUISE
CURTIS

CERTIFICATE OF SERVICE

I Candice Schwager hereby certify that the foregoing document was served on all counsel of record on the 18th day of May 2022 through the state electronic filing system.

Candice Schwager
Candice Leonard Schwager