

NO. 01-23-00362-CV

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IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS  
HOUSTON, TEXAS

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**Candace Louise Curtis,**  
*Appellant*

V.

**Carl Henry Brunsting, Individually & As Independent Executor Of  
The Estates Of Elmer H. Brunsting & Nelva E. Brunsting, Et Al**  
*Appellees*

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On Appeal from Probate Court No. Four  
Harris County, Texas  
C.A. No. 412249-401  
The Honorable James Horowitz, Judge Presiding

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***Appellees' Brief***

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***Oral Argument is not Necessary***

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## **Preamble**

This appeal is part of Appellant's ongoing vexatious litigation against her siblings arising from disputes over their parents' inter-vivos trust. Over a decade ago, Appellant began her litigation in federal court under diversity jurisdiction. Acting at various times *pro se* and through counsel, she voluntarily destroyed federal jurisdiction by adding a nondiverse party in her amended federal court complaint. Upon her request, the federal court sent her case to state court where it joined other estate-related intra-family litigation in Harris County Probate Court No. 4.

Acting at times *pro se* and at times through counsel, Appellant actively participated in the ongoing litigation in Probate Court No. 4 by, among other things, moving Probate Court No. 4 to accept the transfer of her federal court case, agreeing to an order consolidating a second state court case that she initiated into her brother Carl's case, and filing amended petitions. While fighting in Probate Court No. 4, Appellant also filed motions and new litigation in multiple federal courts, all of which were rejected by the federal district courts and the Fifth Circuit Court of Appeals. In Probate Court No. 4, Appellant challenged the court's subject matter jurisdiction, and lost, in 2019. She also lost on summary judgment and in a bill of review in 2022. She filed and withdrew a notice of appeal in 2022, but then sought mandamus from this Court, which it denied, also in 2022. Ignoring precedent, through an April 2023 notice of appeal of the same orders, Curtis now seeks a

different result. Her appeal is untimely, without merit, and should be resoundingly rejected.

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**Note: Appellee, Carole Ann Brunsting, is a party, but did not participate in the preparation of this brief, and is a not signatory to this brief.**

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## Abbreviations & Record Citations

Probate Court No. 4:	Harris County Probate Court No. 4.
-401 Case:	C.A. No. 412249-401; <i>Carl Henry Brunsting, Individually &amp; as Independent Executor of the Estates of Elmer H. Brunsting &amp; Nelva E. Brunsting v. Anita Kay Brunsting, f/k/a Anita Kay Riley, Et Al</i> ; In Probate Court No. 4, Harris County, Texas (Candace Louise Curtis is also a plaintiff in this case).
-402 Case:	C.A. No. 412249-402; <i>Candace Louise Curtis v. Anita Kay Brunsting &amp; Amy Ruth Brunsting</i> ; In Probate Court No. 4, Harris County, Texas (Candace Louise Curtis is a plaintiff in this case, and which case was subsequently consolidated by agreement of the parties (including Candace Louise Curtis) with the -401 case).
-404 Case:	C.A. No. 412249-404; <i>Plaintiff Candace Louise Curtis Statutory Bill of Review</i> ; In Probate Court No. 4, Harris County, Texas.
Appellant, Curtis, or Plaintiff/Curtis:	Candace Louise Curtis, Plaintiff in the -401, -402, & -404 cases, and the Appellant in this pending appeal.
Co-Trustees:	Appellees, Anita Kay Brunsting & Amy Ruth Brunsting.
Anita:	Appellee, Anita Kay Brunsting.
Amy:	Appellee, Amy Ruth Brunsting.
Carl:	Appellee, Carl Henry Brunsting.
Carole:	Appellee, Carole Ann Brunsting.
Elmer:	Decedent, Elmer H. Brunsting.
Nelva:	Decedent, Nelva E. Brunsting.



- Trust: The Restatement of the Brunsting Family Living Trust dated October 10, 1996, inclusive of its subsequent amendments, designations and appointments.
- L.R.: 2019 Local Rules of the Harris County Probate Courts.
- C.R.: Clerk's Record. The Clerk's Record was filed in one (1) volume. Citations to the Clerk's Record are parenthetically referenced by page. (CR 1) means Clerk's Record, Page 1.
- S.C.R.: Supplemental Clerk's Record. There is one (1) supplemental volume of the Clerk's record. Citations to the Supplemental Clerk's Record are parenthetically referenced by page. (S.C.R. 3) means Supplemental Clerk's Record, Page 3.
- R.R.: The Reporter's Record was filed in three (3) volumes and are parenthetically referenced by volume and page. (RR 1:1-3) means Reporter's Record, Volume 1, Pages 1-3.
- Curtis' Appendix: Matters or instruments set forth in Curtis' Appendix.
- App. Appendix: Matters or instruments set forth in Appellees' Appendix.

Curtis made numerous references to documents in other proceedings without providing copies of those documents for the record on this appeal. Even if it is appropriate for this Court to take judicial notice of filings in certain other proceedings, the burden of finding those filings should not fall on the Court or the responding parties. As a result, Curtis failed to provide a record sufficient for a review by this Court and, therefore, waived her right to complain on those issues for which a more complete record is required. *See Fredonia State Bank v. General Am. Life Ins.*, 881 S.W.2d 279, 283 (Tex. 1994)(appellate court will not search the record

for evidence the appellant cites or the trial court's ruling about which appellant complains).

### **Statement of the Case**

This appeal challenges Harris County Probate Court No. 4's subject matter jurisdiction.

In February 2012, Appellant, a California resident, initiated federal court litigation against two of her Texas resident siblings – Anita and Amy. The federal court's jurisdiction was based on diversity. In 2014, Curtis requested leave to amend her complaint to add her other two Texas siblings – Carl and Carole. One sibling was added as a plaintiff. The other was added as a defendant. When Curtis' request was granted, she destroyed the federal court's diversity jurisdiction. Curtis also asked the federal court to remand/transfer her federal court case to a probate case pending in Probate Court No. 4 under C.A. No. 412,249, which involved the probate of her mother's will. The federal court granted both requests – an amendment that destroyed diversity jurisdiction, and a transfer/remand into Probate Court No. 4 in C.A. No. 412,249, which unwound a prior Fifth Circuit opinion regarding applicability of the “probate exception” in federal court on which Curtis relied.

Following its local rules, Probate Court No. 4 assigned Curtis' case to C.A. No. 412,249-401, which was a 2013 case filed by Carl against the Co-Trustees. After Curtis made additional filings, which were assigned to the -402 case, Probate

Court No. 4 signed an agreed order approved by all the parties (including Curtis) that consolidated Curtis' second state court case (the -402) into her brother's pending -401 case.

Over the next four years, Curtis grew dissatisfied with Probate Court No. 4 and so in October 2018 Curtis filed a plea to Probate Court No. 4's subject matter jurisdiction. The motion was denied because Probate Court No. 4 is a statutory probate court with both: (a) exclusive subject matter jurisdiction over probate proceedings regarding a last will and testament, and matters ancillary to a probate proceeding; and (b) concurrent subject matter jurisdiction over actions by or against a trustee, and/or actions that involve an inter vivos or testamentary trust.

Claiming subject matter jurisdiction was lacking, Curtis now appeals rulings from Probate Court No. 4 (the latest ruling having been ordered almost 19 months ago) in the hope that a ruling from this Court that Probate Court No. 4 had no subject matter jurisdiction will erase a host of negative rulings (properly) entered against her in Probate Court No. 4.

### **Statement on Oral Argument**

Oral argument is not necessary because it would be an inefficient use of this Court's time and resources. The issues are straightforward, and oral argument will not aid the Court in making its decision. First, Appellant's appeal is untimely, a fact which is obvious from the orders designated in Curtis' notice of appeal. Second,

despite Curtis' claims to the contrary, there is no conflict to be resolved among authorities about a statutory probate court's exclusive subject matter jurisdiction over probate proceedings regarding a last will and testament and its concurrent subject matter jurisdiction over actions by or against a trustee, or actions that involve an inter vivos or testamentary trust.

Nevertheless, in the event this Court believes oral argument would be beneficial, then the Appellees stand ready and willing to orally argue this case.

### **Issues Presented**

- I. The Standard of Review.
- II. Whether Curtis' appeal is untimely.
- III. Whether Harris County Probate Court No. 4 had subject matter jurisdiction over:
  - a. The Estate of Nelva E. Brunsting; the Trust; and/or the assets of the Estate of Nelva and the Trust.
  - b. The claims and causes of action originally asserted by Curtis in federal court and subsequently transferred/remanded, ***at her request***, to Probate Court No. 4, as well as those subsequently filed by Curtis in Probate Court No. 4.
  - c. The Co-Trustees counterclaims filed against Curtis in Probate Court No. 4, after Curtis' federal court case was transferred/ remanded.

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## **Statement of the Facts**<sup>1,2</sup>

This appeal arises from litigation among siblings over trust(s) established by their parents. (C.R. 90). Elmer and Nelva set up an inter vivos trust (C.R. 90). The named beneficiaries were their children Curtis, Carole, Carl, Anita, and Amy. (C.R. 91, § C). Anita and Amy became Co-Trustees at Nelva's death. (C.R. 39, ¶ 7). Curtis lives in California (C.R. 39, ¶ 7), and her siblings are Texas residents. (C.R. 220, as to Anita and Amy; *see also* 283-284, as to the other siblings).

Elmer died in 2009, and Nelva died in 2011. (C.R. 51, ¶ 64). Both of their wills were admitted to probate in Probate Court No. 4 – Elmer's under cause number 412,248 and Nelva's under cause number 412,249. (C.R. 39, ¶ 9).

Curtis initiated her litigation in 2012 in federal court in the Southern District of Texas, under diversity jurisdiction, asserting various trust-related claims against Anita and Amy as Co-Trustees. (C.R. 39, ¶¶ 8-9).<sup>3</sup> Judge Kenneth Hoyt dismissed

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1 Appellees included in their Appendix relevant documents from Probate Court No. 4 that Appellant did not include in the Clerk's Record. Appellees requested a Supplemental Clerk's Record from the trial court clerk and further requested those documents be delivered to this Court.

2 For a more detailed procedural history of Curtis' Multiple Legal Filings, *see* App. Appendix Tab 1.

3 *See* App. Appendix Tab 2, *Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013); *see also* App. Appendix Tab 1, ¶ 1, Procedural History of Curtis' Multiple Legal Filings.

the case on grounds that the “probate exception”<sup>4</sup> precluded the federal court from exercising jurisdiction. (C.R. 39, ¶ 8)<sup>5</sup> The Fifth Circuit reversed, concluding that the probate exception did not apply. (C.R. 39, ¶ 8).<sup>6</sup>

Notwithstanding the Fifth’s Circuit’s ruling, upon return to the federal district court, Curtis, first *pro se* and then through counsel, amended her complaint to add her other two siblings – Carl and Carole. (C.R. 283-284).<sup>7</sup> The addition of the siblings destroyed diversity because Curtis added Carl, a Texas-resident, as a plaintiff, while the other three siblings were all Texas-resident defendants. (C.R. 283-284).<sup>8</sup> Then, through counsel, Curtis moved for remand to Texas state court

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4 The “probate exception” instructs federal courts to abstain from acting in probate matters. The Supreme Court described it thus, “the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.” (Emphasis added). *Curtis v. Brunsting*, 704 F.3d 406, 409 (5th Cir. 2013) (quoting *Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006)). Nevertheless, once Curtis’ federal court case was remanded/transferred to Harris County Probate Court No. 4, the probate exception applied to further federal court proceedings because Trust and/or Estate property became subject to the custody of Harris County Probate Court No. 4. (Emphasis added).

5 See App. Appendix Tab 2, *Curtis*, 704 F.3d 406, 408, 2013 U.S. App. LEXIS 524; 2013 WL 104918; see also App. Appendix Tab 1, ¶ 2, Procedural History of Curtis’ Multiple Legal Filings.

6 See App. Appendix Tab 2, *Curtis*, 704 F.3d at 409-410; see also App. Appendix Tab 1, ¶ 3, Procedural History of Curtis’ Multiple Legal Filings.

7 See App. Appendix Tab 4, Judge Hoyt’s May 15, 2014 *Order Granting Plaintiff’s Motion to File First Amended Petition*; see also App. Appendix Tab 1, ¶¶ 4-5, Procedural History of Curtis’ Multiple Legal Filing.

8 See App. Appendix Tab 5, Judge Hoyt’s May 15, 2014 *Order Granting Plaintiff’s*

even though the case was initiated in federal court directly, not through removal. (C.R. 272-278).<sup>9</sup> Nonetheless, Judge Hoyt gave Curtis what she wanted and remanded her case to Texas state Probate Court No. 4. (C.R. 283-284).<sup>10</sup>

While Curtis' 2012 litigation was pending in federal court, Carl brought his own trust-related lawsuit against the Co-Trustees in Probate Court No. 4 under C.A. No. 412,249-401. (C.R. 304-307). When Curtis' federal court litigation arrived in Probate Court No. 4 on "remand," it was initially received in Nelva's pending probate proceeding, which was C.A. No. 412,249. (C.R. 272-273).<sup>11</sup> Invoking probate court jurisdiction under the Estates Code, Curtis then requested that Probate Court No. 4 accept the remand as a transfer (C.R. 297-301),<sup>12</sup> and Probate Court No. 4 obliged. (C.R. 302-303).<sup>13</sup> Probate Court No. 4 administratively assigned the federal case to the -401 case. (C.R. 302-303).<sup>14</sup>

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*Motion to Remand; see also* App. Appendix Tab 1, ¶¶ 4-5, Procedural History of Curtis' Multiple Legal Filing.

9 *Id.*

10 *Id.*

11 *See* App. Appendix Tab 5, Judge Hoyt's May 15, 2014 *Order Granting Plaintiff's Motion to Remand*, which ordered a transfer of the 2012 federal case into Nelva Brunsting's probate case, which was docketed in Probate Court No. 4 under C.A. No. 412,249; *see also* App. Appendix Tab 1, ¶ 7, Procedural History of Curtis' Multiple Legal Filings.

12 *See* App. Appendix Tab 1, ¶ 8, Procedural History of Curtis' Multiple Legal Filings.

13 *See* App. Appendix Tab 1, ¶ 9, Procedural History of Curtis' Multiple Legal Filings.

14 *Id.*

In February 2015, Curtis filed in Probate Court No. 4 a copy of the federal court notice of preliminary injunction and master’s report, and an original and first amended petition.<sup>15</sup> Those matters were assigned to the -402 case.<sup>16</sup> In March 2015, Curtis agreed to the consolidation of the -402 case into the -401 case where Curtis and Carl had pending claims against the Co-Trustees. (C.R. 283-293).<sup>17</sup>

In 2016, Curtis brought another federal lawsuit, this time suing a probate judge, an associate probate judge, a court reporter, eleven lawyers, and two of her siblings.<sup>18</sup> The case was assigned to Judge Alfred Bennett, who dismissed it, stating that Curtis’:

... allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a

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15 See App. Appendix Tab 3, C.A. No. 412,249-402; *In re Estate of Nelva E. Brunsting, Deceased* (Curtis’ Notice of Injunction & Report of Master), Tab 6 (Curtis’ Original Petition), and Tab 7 (Curtis’ First Amended Petition); see also, App. Appendix Tab 1, ¶¶ 10, 11, and 12, Procedural History of Curtis’ Multiple Legal Filings.

16 *Id.* (see cause nos. assigned to each instrument).

17 See App. Appendix Tab 9, Probate Court No. 4 agreed order consolidating the -402 case into -401 case; see also App. Appendix Tab 1, ¶ 14, Procedural History of Curtis’ Multiple Legal Filings.

18 See App. Appendix Tab 10, *Curtis v. Kunz-Freed*, C.A. No. 4:16-CV-12969; 2017 U.S. Dist. LEXIS 220526, at \*3 (S.D. TX. May 16, 2017); see also App. Appendix Tab 1, ¶¶ 15-16, Procedural History of Curtis’ Multiple Legal Filings; see also (C.R. 39, footnote 4). Curtis states in footnote 4 that the 2016 federal case and the appeal related thereto were “the only other matter filed” by Curtis. (C.R. 39, footnote 4). The statement is now false. In 2022 Curtis removed the -401 case to federal court, but the removal was denied and the case remanded back to Probate Court No. 4. See App. Appendix Tab 20, C.A. No. 4:22-CV-01129; *Candace Louise Curtis v. Amy Brunsting & Anita Brunsting*; Judge Rosenthal’s May 3, 2022 order remanding the federal case back to Probate Court No. 4.



formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts.<sup>19</sup>

The Fifth Circuit agreed with Judge Bennett, declaring Curtis' claims to be "fantastical' and often nonsensical," and also noted Curtis' claims were "frivolous and certainly do not rise to the level of plausibility that the law requires."<sup>20</sup>

In 2018, shortly after the Fifth Circuit affirmed Judge Bennett, Curtis, through counsel, filed a plea to the jurisdiction in Probate Court No. 4 in the -401 case. (S.C.R. request pending).<sup>21</sup> Probate Court No. 4 denied that plea in 2019. (C.R. 29-30).<sup>22</sup> Curtis did not timely seek appellate review of the denial. Instead, Curtis filed a statutory bill of review nine months later under sub-docket no. -404. (C.R. 11, ¶

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19 See App. Appendix Tab 10, *Curtis v. Kunz-Freed*, C.A. No. 4:16-CV-12969; 2017 U.S. Dist. LEXIS 220526, at 6; see also App. Appendix Tab 1, ¶¶ 15-16, Procedural History of Curtis' Multiple Legal Filings.

20 See App. Appendix Tab 11, *Curtis v. Kunz-Freed*, 726 Fed. Appx. 223, 225; 2018 U.S. App. LEXIS 15317; 2018 WL 2750291; see also, App. Appendix Tab 1, ¶ 17, Procedural History of Curtis' Multiple Legal Filings.

21 The S.C.R. is pending with the Harris County Probate Clerk; see also App. Appendix Tab 12, Copy of Plea to the Jurisdiction filed on October 19, 2018 in the -401 case; see also, App. Appendix Tab 1, ¶ 18, Procedural History of Curtis' Multiple Legal Filings.

22 See App. Appendix Tab 13, Plea to the Jurisdiction denied by Probate Court No. 4 on February 14, 2019; see also, App. Appendix Tab 1, ¶ 19, Procedural History of Curtis' Multiple Legal Filings.

44),<sup>23</sup> which Probate Court No. 4 denied in March 2022 (C.R. 58).<sup>24</sup>

Following the denial of the plea to the jurisdiction, Probate Court No. 4 issued two sanctions orders against Curtis in 2020. (S.C.R. request pending).<sup>25</sup> Whereupon, Curtis went back to Judge Hoyt in federal court and asked him to reinstate her 2012 federal case. Noting that Curtis was forum shopping, Judge Hoyt rejected her request,<sup>26</sup> and the Fifth Circuit affirmed that rejection.<sup>27</sup>

Back in Probate Court No. 4, litigation continued, including motion practice on Co-trustees' motion for summary judgment against Curtis. (C.R. 31-34).<sup>28</sup> Probate Court No. 4 granted the Co-Trustees summary judgment in February 2022, (C.R. 31-34),<sup>29</sup> and Curtis' filed a motion to vacate, which Probate Court No. 4

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23 See App. Appendix Tab 15, C.A. No. 412,249-404, *Plaintiff's Statutory Bill of Review* (filed on November 21, 2019); see also, App. Appendix Tab 1, ¶ 21, Procedural History of Curtis' Multiple Legal Filings.

24 See App. Appendix Tab 19, Ordering Denying the Bill of Review; see also App. Appendix Tab 1, ¶ 30, Procedural History of Curtis' Multiple Legal Filings.

25 S.C.R. is pending with the Harris County Probate Clerk; see also, App. Appendix Tab 14, Sanction Order dated July 23, 2019; see also Tab 16, Sanction Order dated December 12, 2019; see also App. Appendix Tab 1, ¶ 20 and 22, Procedural History of Curtis' Multiple Legal Filings.

26 See App. Appendix Tab 17, Judge Hoyt's September 23, 2020 order denying Curtis Rule 60 relief; see also *Curtis v. Brunsting*, 860 Fed. Appx. 332, 334-335 (5th Cir. 2021) (Per Curiam); App. Appendix Tab 1, ¶¶ 23-24, Procedural History of Curtis' Multiple Legal Filings.

27 See App. Appendix Tab 18, *Curtis v. Brunsting*, 860 Fed. Appx. 332, 336 (5th Cir. 2021) (Per Curiam); see also App. Appendix Tab 1, ¶ 26, Procedural History of Curtis' Multiple Legal Filings.

28 See App. Appendix Tab 1, ¶ 27, Procedural History of Curtis' Multiple Legal Filings.

29 See App. Appendix Tab 1, ¶ 29, Procedural History of Curtis' Multiple Legal Filings.

denied on April 19, 2022. (S.C.R. request pending).<sup>30</sup>

Also in March 2022, Probate Court No. 4 denied Curtis' -402 bill of review case which attacked Probate Court No. 4's denial of her plea to the jurisdiction.<sup>31</sup> In April 2022, Curtis again attempted to remove the -401 case to federal court.<sup>32</sup> Judge Lee Rosenthal promptly rejected Curtis' removal finding that because Curtis, as plaintiff, had chosen to be in Probate Court No. 4, she would be held to her choice of forum and could not remove the case to federal court.<sup>33</sup>

Following Judge Rosenthal's rejection, Curtis filed her first notice of appeal for the -401 case in May 2022.<sup>34</sup> In that prior appeal, Curtis sought review of the denial of her plea to the jurisdiction, the summary judgment granted by Probate

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30 The S.C.R. is pending with the Harris County Probate Clerk; *see* Tab 27, Probate Court No. 4 order that denied Curtis' motion to vacate; *see also*, App. Appendix Tab 1, ¶ 33, Procedural History of Curtis' Multiple Legal Filings.

31 *See* App. Appendix Tab 19, Probate Court No. 4's order denying the Statutory Bill of Review; *see also* App. Appendix Tab 1, ¶ 30, Procedural History of Curtis' Multiple Legal Filings.

32 *See* App. Appendix Tab 20; C.A. No. 4:22-CV-01129; *Candace Louise Curtis v. Amy Brunsting & Anita Brunsting*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Lee H. Rosenthal presiding)(May 3, 2022 order of remand confirming removal); *see also* App. Appendix Tab 1, ¶ 32, Procedural History of Curtis' Multiple Legal Filings.

33 *See* App. Appendix Tab 20; C.A. No. 4:22-CV-01129; *Candace Louise Curtis v. Amy Brunsting & Anita Brunsting*; Judge Rosenthal's May 3, 2022 order remanding the federal case back to Probate Court No. 4, at 2; *see also* App. Appendix Tab 1, ¶ 34, Procedural History of Curtis' Multiple Legal Filings.

34 *See* App. Appendix Tab 22, C.A. No. 01-22-00378-CV; *Candace Louise Curtis v. Amy Ruth Brunsting & Anita Kay Brunsting*; 1<sup>ST</sup> Court of Appeals opinion referencing Curtis first notice of appeal and dismissing same; *see also* App. Appendix Tab 1, ¶ 35, Procedural History of Curtis' Multiple Legal Filings.

Court No. 4, and various other rulings.<sup>35</sup> This first appeal was docketed in this Court under C.A. No. 01-22-00378-CV.<sup>36</sup> On August 2, 2022, Curtis' moved to dismiss her appeal, which this Court granted on February 14, 2023.<sup>37</sup>

Then, in July 2022, Curtis filed a mandamus action, which was docketed in the 1<sup>ST</sup> Court of Appeals under C.A. No. 01-22-00514-CV. In that mandamus proceeding, Curtis challenged the following orders of Probate Court No. 4: (1) a June 3, 2014 order granting Curtis' Motion to Enter Remand as a Transfer and Order Accepting the Federal 'Remand' as a Transfer (emphasis added); (2) a February 14, 2019 order denying Curtis' plea to the jurisdiction and pleas in abatement and declaring jurisdiction proper in Probate Court No. 4; (3) a February 25, 2022 order granting summary judgment in favor of the Co-Trustees; (4) a March 2, 2022 order denying Curtis' statutory bill of review; and (5) a March 11, 2022

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35 *Id.*

36 See App. Appendix Tab 22, C.A. No. 01-22-00378-CV; *Candace Louise Curtis v. Amy Ruth Brunsting & Anita Kay Brunsting*; see also App. Appendix Tab 1, ¶ 37, Procedural History of Curtis' Multiple Legal Filings.

37 See App. Appendix Tab 22, C.A. No. 01-22-00378-CV; *Candace Louise Curtis v. Amy Ruth Brunsting & Anita Kay Brunsting*; 1<sup>ST</sup> Court of Appeals granting Curtis' motion to dismiss her appeal; see also App. Appendix Tab 1, ¶ 39, Procedural History of Curtis' Multiple Legal Filings.

order of severance.<sup>38</sup> This Court denied the mandamus in September 2022.<sup>39</sup>

In April 2023, Curtis filed her second notice of appeal for the -401 case, which is the case *sub judice*.<sup>40</sup> Curtis again challenges the denial of her plea to the jurisdiction,<sup>41</sup> with the hope that a finding of no subject matter jurisdiction will result in the reversal of eleven years of rulings, both requested by and adverse to her, including, but not limited to, the summary judgment entered against her in February 2022.<sup>42</sup>

### **Summary of the Argument**

Curtis asserts a lack of jurisdiction by Probate Court No. 4 over her claims but argues almost exclusively in her brief that jurisdiction was lacking for Carl's claims in which she was only a nominal defendant. Curtis reaches this erroneous conclusion by ignoring the statutory provisions establishing jurisdiction and attempting to conjure a conflict of authorities where one does not exist.

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38 See App. Appendix Tab 21, C.A. No. 01-22-00514-CV; *Relator Candace Louise Curtis Petition for Writ of Mandamus*; see also App. Appendix Tab 1, ¶ 36, Procedural History of Curtis' Multiple Legal Filings.

39 *Id.*; see also App. Appendix Tab 1, ¶ 38, Procedural History of Curtis' Multiple Legal Filings.

40 (C.R. 365). The second notice of appeal is referenced in the County Clerk's Case Summary for C.A. No. 412,249-401.

41 Curtis Brief, at 2.

42 *Id.*

Curtis is wrong about Probate Court No. 4's jurisdiction over Carl's claims, but those arguments are irrelevant to the jurisdiction of Probate Court No. 4 over Curtis' claims. Before Probate Court No. 4 granted the February 2022 summary judgment against Curtis, Curtis sought affirmative relief from Probate Court No. 4. After the summary judgment was granted, Curtis pivoted to now claim she never voluntarily sought relief in Probate Court No. 4.

The record, which Curtis has failed to adequately provide to this Court, confirms otherwise. A proper record shows Curtis has repeatedly lost attempts in multiple courts to reverse her losses in Probate Court No. 4, but now asks this Court in an untimely appeal to ignore the obvious jurisdiction of Probate Court No. 4 over the claims Curtis litigated there.

## **Argument**

### **I. STANDARD OF REVIEW.**

The standard of review for a challenge to a court's subject matter jurisdiction is a question of law reviewed *de novo*. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004).

Curtis' appeal in the case *sub judice* is premised on a challenge of Probate Court No. 4's subject matter jurisdiction. Although she attempts to appeal from an order denying her plea to the jurisdiction, an order entering summary judgment

against her, and “any other rulings subsumed within Cause No. 412249-401[,]”<sup>43</sup> Curtis does not provide the record to challenge those outcomes, and does not specifically challenge the substance or propriety of any of the orders entered by Probate Court No. 4. Instead, she challenges Probate Court No. 4’s jurisdiction to enter the orders as void *ab initio*. Because Probate Court No. 4 has subject matter jurisdiction, all Probate Court No. 4’s orders should stand as entered. Moreover, Curtis’ appeal is untimely and must be rejected for that reason as well.

## II. CURTIS’ APPEAL IS UNTIMELY.

This appeal should be denied because it is untimely. Curtis appeals from a February 2019 order denying her plea to the jurisdiction, a February 2022 summary judgment, and “any other rulings subsumed within Cause No. 412249-401.”<sup>44, 45</sup> Curtis filed two notices of appeal, one in May 2022 and one in April 2023.<sup>46</sup> Curtis’ notices of appeal were due in March 2019 for the plea to the jurisdiction, and April

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43 Curtis’ Second Notice of Appeal, pgs. 1-2.

44 *Id.*

45 Curtis’ May 2022 notice of appeal does not state that she is appealing the trial court’s March 2, 2022 denial of her bill of review, which relitigated her plea to the jurisdiction. Even if she were appealing the March 2, 2022 order, her notice of appeal was too late. As for the notice of appeal for the bill of review, it was due April 1, 2022, but not filed until May 18, 2022, and then subsequently dismissed by this Court on February 14, 2023, per Curtis’ August 2, 2022 request.

46 *See* (C.R. 363) regarding the first notice of appeal, and (C.R. 365) regarding the second notice of appeal.

2022 for the summary judgment.<sup>47</sup> As this appeal was not filed until April 2023, it is unquestionably late and should be denied.<sup>48</sup>

### **III. PROBATE COURT NO. 4 HAD SUBJECT MATTER JURISDICTION.**

Curtis raises two arguments regarding the lower court’s (and thus this Court’s) subject matter jurisdiction. First, she claims that the federal court transfer/remand order she requested was ineffective. Second, she contends that the proceedings in the -401 probate court case were not ancillary to an estate being probated. Because her appeal is untimely, this Court need not consider Curtis’ substantive arguments, but if it does, only one conclusion can be reached—both arguments fail.

#### **A. The Effect of the Federal Remand Order**

In February 2012, Curtis, acting *pro se*, filed a federal court lawsuit under the federal court’s diversity jurisdiction. Still acting *pro se*, Curtis attempted to amend her complaint, but the attempt was denied by Judge Hoyt. Curtis then hired counsel who successfully moved Judge Hoyt for leave to amend to add Carl (as a plaintiff) and Carole (as a defendant), and subsequently, to “remand” Curtis’ claims to state

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<sup>47</sup> TEX. R. APP. P. 26.1, a “notice of appeal must be filed within 30 days. . . .” As for Curtis’ reference to “any other rulings subsumed within Cause No. 412249-401,” the “any other rulings” phrase is too vague to identify which orders, whether they were final, and when a notice of appeal was due. Curtis’ failure to identify which orders are part of “any other rulings” and whether those were appealable is fatal to Curtis’ attempt to appeal those orders, whatever they may be.

<sup>48</sup> See *In re USAA*, 307 S.W.3d 299, 307 (Tex. 2010); *Jarrell v. Bergdorf*, 580 S.W.3d 463, 466 (Tex. App.—Houston [14th Dist.] 2019, no pet.).



court because of the lack of diversity created by her amended complaint.

Curtis argues that the transfer/remand order was ineffective, *i.e.* that it could not and did not send her federal case to state court.<sup>49</sup> Curtis' arguments elevate form over substance and, in any event, lead down a road that ends in one place—her litigation is over and not subject to review by any court, federal or state.

Curtis elevates form over substance when she argues that Judge Hoyt's transfer/remand order was a non-event, even though he gave her what she twice requested (leave to amend and remand).<sup>50</sup> Once Judge Hoyt granted Curtis' motion for leave to amend to add a diversity-destroying party, the proper action would have been to dismiss her case without prejudice.<sup>51</sup>

Nevertheless, on appellate review, the Fifth Circuit concluded that the effect was the same—dismissal from federal court, arrival in state court, and “proceed[ing] in the same manner as would have occurred after a proper dismissal without prejudice.”<sup>52</sup> In other words, had Judge Hoyt dismissed the litigation without prejudice, Curtis would have had the option to file in state court, or cease to be a litigant, and had she filed in state court, her case would have ended up in Probate

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49 Curtis Brief, pg. 37.

50 *See Curtis v. Brunsting*, 860 Fed. App'x 332, 336 (5th Cir. 2021) (Per Curiam).

51 *Id.*

52 *Id.*

Court No. 4, just like it did on “remand.”<sup>53</sup> Thus, regardless of how the federal case ultimately made it to Probate Court No. 4, whether dismiss/refile or remand/transfer, the case still arrives at the end of the state court road, where it is now — before this Court on an untimely appeal.

In an effort to avoid the fact that Probate Court No. 4 has subject matter jurisdiction, Curtis continues to argue that the “remand” order was ineffective and, therefore, her original lawsuit is still in federal court on the basis that a state court cannot receive a case on remand, if the state court case was never removed. The argument is without merit and the Fifth Circuit rejected it.<sup>54</sup> In other words, Curtis’ federal court litigation, even if it somehow existed, is also at the end of the federal court road.

The bottom line is this — Curtis either: (1) has a federal lawsuit that ended when the Fifth Circuit’s mandate issued; or (2) a state court lawsuit that ended when she failed to timely appeal the judgments she now attacks. There is no reason for this Court to reach Curtis’ second argument — that the -401 proceeding is not

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<sup>53</sup> *Id.*

<sup>54</sup> Curtis’ attempts to obtain federal court jurisdiction have been denied twice by the Fifth Circuit and three federal district courts. *See* App. Appendix Tab 11, *Curtis v. Kunz-Freed*, 726 Fed. Appx. 223, 225, 2018 U.S. App. LEXIS 15317, 2018 WL 2750291; App. Appendix Tab 18, *Curtis v. Brunsting*, 860 Fed. Appx. 332, 336; 2021 U.S. App. LEXIS 18417; 2021 WL 2550114; *see also* App. Appendix Tab 20, C.A. 4:22-CV-01129; *Candace Louise Curtis v. Amy Ruth Brunsting & Anita Kay Brunsting*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Lee H. Rosenthal presiding). Docket Ref. 14, Order remanding the case back to Probate Court No. 4.

ancillary to a probate proceeding, or that Probate Court No. 4 does not have concurrent jurisdiction — but in the unlikely event this Court reaches Curtis’ second argument, it should resoundingly reject it.

**B. The -401 Proceeding is Ancillary to a Probate Proceeding.**

Curtis contends that the -401 proceeding into which her federal lawsuit was transferred (at her request) is not properly before Probate Court No. 4 because it was not ancillary to a probate proceeding.<sup>55</sup> In effect, Curtis argues that Probate Court No. 4 did not have jurisdiction over Carl’s claims, with the presumed but unstated conclusion that if Probate Court No. 4 lacked jurisdiction over Carl’s -401 case, then Probate Court No. 4 also lacked jurisdiction over Curtis’ claims once transferred to Carl’s -401 case.<sup>56</sup> Curtis is mistaken.

Curtis’ argument fails because it is inadequately briefed and because whether Probate Court No. 4 had jurisdiction over Carl’s claims (it did) has no bearing on whether Probate Court No. 4 has jurisdiction over Curtis’ claims. *Compare* TEX. R. APP. P. 38.1(i) (requiring “clear and concise argument”) *with* Curtis’ Brief at 27-37 (omitting any argument about how a lack of jurisdiction over Carl’s claims leads to a lack of jurisdiction over her claims). Notably, Probate Court No. 4 had jurisdiction

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<sup>55</sup> Curtis’ Brief at 22-37.

<sup>56</sup> *Id.*

over Curtis' claims under the Estates Code provisions for jurisdiction over trusts,<sup>57</sup> and under the Estates Code provisions for jurisdiction over probate and probate-related matters.<sup>58</sup>

Curtis' brief fails to challenge the basis for jurisdiction over her own lawsuit, a lawsuit in which she affirmatively asserted the existence of probate jurisdiction.<sup>59</sup> See App. Appendix Tab 8 (Curtis' Second Amended Petition) (asserting jurisdiction under TEX. ESTATES CODE ANN. §§ 32.002(c), .005); *Tex. Ass'n of Bus. v. Tex. Air Cont. Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (placing burden of pleading jurisdiction on plaintiff).

Notwithstanding that Curtis' brief lacks specificity and addresses the wrong party's claims, the -401 case began as a lawsuit by Carl against the trustees of certain Brunsting inter vivos trusts, and Curtis' claims were subsequently joined in the -401 case.

The Estates Code provides that "All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising

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<sup>57</sup> See App. Appendix Tab 24, TEX. ESTATES CODE ANN. §§ 32.005 - .007.

<sup>58</sup> See App. Appendix Tab 24, TEX. ESTATES CODE ANN. §§ 32.001, .002, and .005.

<sup>59</sup> Even assuming Probate Court No. 4 did not have jurisdiction over Carl's claims, the only effect that would have on Curtis' claims is that her claims would have remained before Probate Court No. 4 in the -402 cause number, where they were docketed after Probate Court No. 4 granted her request to accept the remand/transfer from federal court, instead of having been consolidated per an agreed order into Carl's -401 cause number.

original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.” *See* TEX. EST. CODE § 32.001(a).<sup>60</sup> “In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction.” *See* TEX. EST. CODE § 32.001(d).<sup>61</sup>

“A probate court may exercise pendent jurisdiction and ancillary jurisdiction as necessary to promote judicial efficiency.” *See* TEX. EST. CODE § 32.001(b).<sup>62</sup>

“In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested.” *See* TEX. EST. CODE § 32.005(a);<sup>63</sup> TEX. GOV’T CODE § 25.1031(c).<sup>64</sup> A “probate proceeding” includes, *inter alia*, the probate of a Will, with or without an administration, and issuance of letters testamentary and of administration. *See* TEX. EST. CODE § 31.001.<sup>65</sup> Furthermore, a statutory probate court has concurrent jurisdiction with the district court in:

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60 *See* App. Appendix Tab 24, Text of TEX. ESTATES CODE ANN. §§ 32.001(a).

61 *See* App. Appendix Tab 24, Text of TEX. ESTATES CODE ANN. §§ 32.001(d).

62 *See* App. Appendix Tab 24, Text of TEX. ESTATES CODE ANN. §§ 32.001(b).

63 *See* App. Appendix Tab 24, Relevant text of TEX. EST. CODE, § 32.005(a).

64 During the entire pendency of this litigation, Harris County has had only four (4) statutory probate courts. *See* TEX. GOV’T CODE § 25.1031(c) prior to January 1, 2023. However, the Texas Legislature amended TEX. GOV’T CODE § 25.1031(c), which added a fifth statutory probate court.

65 *See* App. Appendix Tab 24, Text of TEX. EST. CODE, § 31.001.

- (2) an action by or against a trust;
- (3) an action involving an inter vivos trust, testamentary trust, . . . .

*See* TEX. EST. CODE § 32.007(2)-(3).<sup>66</sup>

For docketing purposes, the local rules for the Harris County Probate Courts refer to matters that constitute a probate proceeding as “Core Matters” and related matters as “Ancillary Matters.”<sup>67</sup> More specifically, “Core Matters” are those matters principally concerned with the probate of a Will and an administration of the estate, and should be filed under the main cause number.<sup>68</sup>

“Ancillary Matters that belong in a different file with an ancillary or related designation” include, but are not limited to, “Intervivos Trust Actions (settlor is decedent in probate proceeding in subject court)” and are given the original docket number plus a suffix beginning with “4”.<sup>69</sup>

Nelva’s Will was admitted to probate on August 28, 2012, under C.A. No. 412,249. (C.R. 39, ¶ 9). It cannot be disputed that the probate of her Will is a probate proceeding. It also cannot be disputed that Nelva’s probate was properly in Probate

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<sup>66</sup> *See* App. Appendix Tab 24, Text of TEX. EST. CODE, § 32.007(2)-(3).

<sup>67</sup> *See* Tab 23, Probate Court Local Rules, Relevant text of 2.5 and 2.6.

<sup>68</sup> *See* App. Appendix Tab 23, Probate Court Local Rules, Relevant text of 2.5 and 2.5.1.

<sup>69</sup> *See* App. Appendix Tab 23, Probate Court Local Rules, Relevant text of 2.4 and 2.6.5.

Court No. 4 because she was a resident of Harris County, Texas.<sup>70</sup>

The question, then, is whether Curtis' claims, which became part of the -401 ancillary matter case, were truly ancillary to the pending probate proceedings. The answer is yes because per TEX. EST. CODE § 32.007(2)-(3), Curtis' claims constitute an "action . . . against a trustee," and, the Co-Trustees counterclaims against Curtis constitute an "action by . . . a trustee," and a probate court has concurrent jurisdiction over such claims, which means Curtis' challenge fails.

In response, Curtis argues that once Probate Court No. 4 dropped Nelva's probate from its active docket, there ceased to be a probate proceeding to which a -401 ancillary matter could attach. Once again, Curtis misconstrues the law, and the reasons are two-fold.

First, as *Lee v. Lee* makes clear, a statutory probate "court's trust jurisdiction is independent of its probate jurisdiction." 528 S.W.3d 201, 212 (Tex. App.—Houston [14<sup>TH</sup> Dist.] 2017 pet. denied). In an attempt to avoid the effects of *Lee*, Curtis argues there is a decisional split between *In re Hannah* and *Lee* where one does not exist. See *Lee*, 528 S.W.3d 201; *In re Hannah*, 431 S.W.3d 801 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding).

Curtis cites *Hannah* as authority that Probate Court No. 4 lacked subject matter jurisdiction over Carl's -401 case and, therefore, by implication her case. See

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<sup>70</sup> See App. Appendix Tab 26, Proof of Death & Other Facts, ¶¶ 1-2.

Curtis' Brief at 24, 29. More specifically, Curtis cites *Hannah* for the innocuous statement that a statutory probate court has subject matter jurisdiction over probate matters and matters related to a probate proceeding. *See id.* That is a correct statement of the law, but Curtis' premise that those are the only two categories of cases over which a statutory probate court is not correct. As shown above, per the TEX. ESTATES CODE and *Lee*, in addition to jurisdiction over probate matters and matters related to a probate proceeding, statutory probate courts have trust jurisdiction and pendant and ancillary jurisdiction to aid in decisional efficiency.

Furthermore, the two cases should be read in harmony because they both speak to different categories of cases over which probate courts have jurisdiction. *Hannah* addresses a statutory probate court's probate and probate-related jurisdiction in a venue related dispute. *Hannah*, 431 S.W.3d at 807-08. *Lee* provides that a statutory probate "court's trust jurisdiction is independent of its probate jurisdiction." 528 S.W.3d at 212. Those two cases both apply the jurisdiction provided to a statutory probate court through the Estates Code and the Trust code (the latter being contained in the Property Code). TEX. ESTATES CODE §§ 32.006-.007;<sup>71</sup> TEX. PROP. CODE § 115.001.<sup>72</sup>

Second, removal from an active docket is not closure. In order to close a

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71 *See* App. Appendix Tab 24, Text of TEX. ESTATES CODE §§ 32.006-.007.

72 *See* App. Appendix Tab 25, Relevant text of TEX. PROP. CODE § 115.001



probate case or trust related lawsuit, the Court would have to enter an order under TEX. EST. CODE, ch. 362, and/or TEX. PROPERTY CODE §112.054, neither of which has occurred. Nor could closure occur in this case because the injunction requiring Probate Court No. 4's approval of financial transactions remains in place. As such, Probate Court No. 4 had jurisdiction and has never lost it. Therefore, Curtis' substantive arguments fail.

### **Conclusion & Prayer**

This untimely filed appeal is an attempt to reverse orders that can no longer be attacked and to return the matters pending in C.A. No. 412249-401 to federal court. Curtis cannot return to federal court because three federal district court judges, in three different federal court proceedings, and two opinions from the U.S. Court of Appeals for the Fifth Circuit have already said there is no federal court jurisdiction.

Yet, even without the benefit of the federal court rulings, Curtis' claims belong in Probate Court No. 4 because the relief Curtis sought against the Co-Trustees was ancillary to Nelva's probate proceeding. In addition, Probate Court No. 4 had concurrent jurisdiction because there were claims by or against a Trustee, and there were claims that related to an inter vivos trust (*e.g.*, the Brunsting Family Trust).

Last, but not least, Curtis failed to provide an adequate record to this Court with the intent to obfuscate Probate Court No. 4's obvious and exclusive jurisdiction of Nelva's probate and matters ancillary to Nelva's probate, and Probate Court No. 4's concurrent jurisdiction of Curtis' claims against the Co-Trustees, and the Co-Trustees claims against Curtis.

For the foregoing reasons, Curtis' appeal should be denied.

Respectfully submitted:

*// s // Stephen A. Mendel*

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## **Certificate of Service**

I certify that a true and correct copy of **APPELLEES' BRIEF** has been forwarded to the attorneys of record, and the Pro Se party, via this Court's electronic filing system, email, and/or certified mail, return receipt requested on this October 2, 2023.

*// s // Stephen A. Mendel*

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**Stephen A. Mendel**

## **Certificate of Compliance**

I certify that **APPELLEES' BRIEF** complies with the typeface and word count requirements set forth in the Texas Rules of Civil Procedure. This Brief has been prepared using Microsoft Word, in 14-point Times New Roman font for the text and 12-point Times New Roman font for footnotes. This Brief contains 6,399 words, determined by the word count feature of Microsoft Word, and excluding those portions exempted by TEX. R. APP. P. 9.4(i)(1).

This brief does not exceed the 15,000 word limit imposed by TEX. R. APP. P. 9.4(i)(2)(b).

*// s // Stephen A. Mendel*

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**Stephen A. Mendel**

NO. 01-23-00362-CV

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IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS  
HOUSTON, TEXAS

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**Candace Louis Curtis,**  
*Appellant*

V.

**Carl Henry Brunsting, Individually & As Independent Executor Of  
The Estates Of Elmer H. Brunsting & Nelva E. Brunsting, Et Al**  
*Appellees*

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**Affidavit of Stephen A. Mendel**

**&**

**Appellees' Appendix Index**

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STATE OF TEXAS     §  
                                  §  
COUNTY OF HARRIS §

Before me the undersigned authority, personally appeared Stephen A. Mendel, and after being duly sworn on his oath he deposed as follows:

1. My name is Stephen A. Mendel. I am over the age of twenty-one, competent to make this affidavit, and the facts stated herein are true, correct, and based on my personal knowledge.

2. My law firm and I have been involved in the litigation among the Brunsting siblings since November 14, 2014, and by virtue of that representation, I have personal knowledge of the federal and state court proceedings and the filings and rulings therein referenced in the briefs pending before this Court.

3. The Appellees' Appendix contains the instruments referenced below, each of which is a true and correct copy.

4. Tabs 23, 24, and 25 contain true and correct excerpts from the Local Rules of the Harris County Probate Courts (Tab 23), the Texas Estates Code (Tab 24), and/or the Texas Property Code (Tab 25), as the case may be.

5. Tabbed instruments are booked marked for the Court's convenience.

#### **Appellees' Appendix Index**

- Tab 1 The Undisputed Procedural History of Curtis' Multiple Legal Filings.
- Tab 2 *Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013).
- Tab 3 C.A. No. 412,249-402; *In re Estate of Nelva E. Brunsting, Deceased*; Curtis' Notice of Injunction & Master's Report. (Note: the Master's Report, which was attached as Exhibit B was omitted for two reasons. First, the removal of Exhibit B reduced the page count for the Appellees' Appendix by forty-two (42) pages. Second, the Master's Report is not relevant to the issue of Probate Court No. 4's subject matter jurisdiction).
- Tab 4 C.A. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting, Et Al*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Kenneth M. Hoyt presiding). Docket Ref. 111, Judge Hoyt's order dated May 15, 2014, granting Curtis' motion to amend her complaint, which destroyed the Court's diversity jurisdiction.

- Tab 5 C.A. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting, Et Al*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Kenneth M. Hoyt presiding). Docket Ref. 112, Judge Hoyt's order dated May 15, 2014, granting Curtis' motion remand to C.A. no. 412,249, Probate Court No. 4.
- Tab 6 C.A. No. 412,249-402; In re the Estate of Nelva E. Brunsting, Deceased; *Notice of Filing of Plaintiff's Original Petition*. (Note: Curtis' original petition filed in the -402 case is the same as the petition filed in C.A. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting, Et Al*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Kenneth M. Hoyt presiding). The instrument is part of this Appendix to confirm that Curtis sought affirmative relief from Probate Court 4. However, the Appellees omitted the attachments to Curtis' original petition for two reasons. First, the removal of attachments to the original petition reduced the page count for the Appellees' Appendix by five hundred eighty-three (583) pages. Second, the attachments to the petition are not relevant to the issue of Probate Court No. 4's subject matter jurisdiction).
- Tab 7 C.A. No. 412,249-402; In re the Estate of Nelva E. Brunsting, Deceased; *Notice of Filing of Plaintiff's First Amended Petition*.
- Tab 8 C.A. No. 412,249; In re the Estate of Nelva E. Brunsting, Deceased; *Plaintiff's Second Amended Petition*.
- Tab 9 C.A. No. 412,249-402, Probate Court No. 4 agreed order of all parties (including Curtis) consolidating the -402 case into the -401.
- Tab 10 *Curtis v. Kunz-Freed*; 2017 U.S. Dist. LEXIS 220526, at \*4, regarding C.A. 4:16-CV-01969; *Candace Louise Curtis & Rik Wayne Munson, Private Attorneys General Plaintiffs v. Candace Kunz-Freed, Et Al*; U.S. District Court, S.D. of Texas, Houston Division.
- Tab 11 *Curtis v. Kunz-Freed*, 726 Fed. Appx. 223, 2018 U.S. App. LEXIS 15317, 2018 WL 2750291.
- Tab 12 C.A. No. 412,249-401; Curtis' the Plea to the Jurisdiction as to Probate Court No. 4. (S.C.R. requested).

- Tab 13 *See* (C.R. 29-30); Probate Court No. 4's Order Denying Pleas & Motions Filed by Candace Curtis.
- Tab 14 C.A. No. 412,249-401; Probate Court No. 4's July 23, 2019 sanctions order #1 issued against Curtis.
- Tab 15 C.A. No. 412,249-404; Curtis' Statutory Bill of Review filed in Probate Court No. 4.
- Tab 16 C.A. No. 412,249-401; Probate Court No. 4's December 12, 2019 sanctions order #2 issued against Curtis.
- Tab 17 C.A. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting, Et Al*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Kenneth M. Hoyt presiding). Docket Ref. 139, Judge Hoyt's order referenced Curtis' Federal Rule 60b Motion seeking *ex parte* relief, and which order denied same.
- Tab 18 *Curtis v. Brunsting*, 860 Fed. Appx. 332; 2021 U.S. App. LEXIS 18417; 2021 WL 2550114.
- Tab 19 C.A. No. 412,249-404; Order denying Curtis' Statutory Bill of Review.
- Tab 20 C.A. 4:22-CV-01129; *Candace Louise Curtis v. Amy Ruth Brunsting & Anita Kay Brunsting*; U.S. District Court, S.D. of Texas, Houston Division (Hon. Lee H. Rosenthal presiding). Docket Ref. 14, Order remanding the case back to Probate Court No. 4.
- Tab 21 C.A. No. 01-22-00514-CV; *Relator Candace Louise Curtis Petition for Writ of Mandamus*; Court of Appeals opinion denying mandamus.
- Tab 22 1<sup>ST</sup> Court of Appeals opinion that dismissed Curtis' first appeal under C.A. No. 01-22-00378-CV.
- Tab 23 Harris County Probate Court Local Rules:  
L.R. 2.4 (Sub-File Nos.).  
2.5 (Core Matters).  
2.5.1 (Examples of Core Matters).

2.6 (Ancillary Matters in a separate file).  
2.6.5 (Example of an Ancillary Matter).

Tab 24 Tex. Estates Code:

§ 31.001. Scope of “Probate Proceeding” for Purposes of Code.

§ 32.001. General Probate Court Jurisdiction; Appeals.

§ 32.002. Original Jurisdiction for Probate Proceedings.

§ 32.005. Exclusive Jurisdiction of Probate Proceeding in County with Statutory Probate Court.

§ 32.006. Jurisdiction of Statutory Probate Court with Respect to Trusts and Powers of Attorney.

§ 32.007. Concurrent Jurisdiction with District Court.


Tab 25 Tex. Prop. Code (Trust Code):

§ 112.054. Judicial Modification, Reformation, or Termination of Trusts.

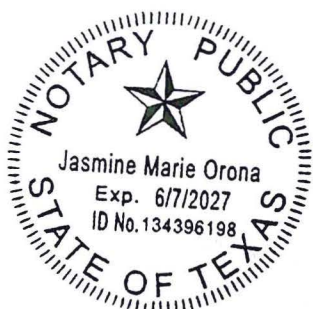
§ 115.001. Jurisdiction.

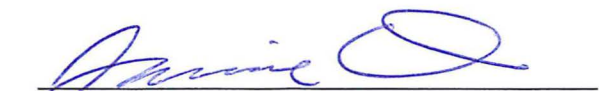
Tab 26 Proof of Death & Other Facts; C.A. No. 412,249; *Estate of Nelva E. Brunsting, Deceased*; Probate Court No. 4.

Tab 27 Probate Court No. 4 order that denied Curtis’ motion to vacate the summary judgment.

  
Stephen A. Mendel

SUBSCRIBED and SWORN before me, the undersigned Notary Public, by Stephen A. Mendel on this October 2, 2023, for the purposes and capacities set forth therein.



  
Notary Public In & For  
The State of Texas