

NO. 412,249-401

CARL HENRY BRUNSTING, et al	§	IN PROBATE COURT
	§	
v.	§	NUMBER FOUR (4) OF
	§	
ANITA KAY BRUNSTING, et al	§	HARRIS COUNTY, TEXAS

**CO-TRUSTEES BRIEF IN SUPPORT OF STATUS CONFERENCE AND
RESPONSE TO NON-PARTY, KUNZ-FREED’S MOTION TO APPOINT PERSONAL
REPRESENTATIVE OR ADMINISTRATOR**

TO THE HONORABLE JUDGES HORWITZ & COMSTOCK:

At least as much as anyone else connected to this -401 proceeding, the still pending -403 and -405 proceedings, and/or the appeal of the -401 and -404 proceedings, to say nothing of the three separate federal court proceedings pursued, unsuccessfully, by disinherited beneficiary Candice Louise Curtis (“Curtis”), Co-Trustees, ANITA BRUNSTING (“Anita”) and AMY BRUNSTING (“Amy”) (collectively “Co-Trustees”) appreciate the need to bring all of these matters to a close. However, at least for now, it is the Co-Trustees’ belief that they, the parties to the -403 and -405 proceedings, and this Court must stay the course.

Defendants in the -403 proceeding, Candace Kunz-Freed and Vacek & Freed (collectively, “Kunz-Freed”) have set a hearing on Motion to Appoint Personal Representative or Administrator previously filed in this -401 proceeding. As non-parties to this -401 proceeding, it is unclear what authority, if any, allows them to petition this Court for relief of this, or any kind, in this -401 proceeding and/or in the base case. Nevertheless, the frustrations of this/these decade long proceeding(s) notwithstanding, a personal representative/administrator **should not** be appointed at this time.

I. WHERE WE WERE

Understanding the Co-Trustees' "stay the course" mentality requires consideration of certain prior-in-time events, including –

- As the (then) executor of the Estates of Elmer and Nelva Brunsting, Carl Henry Brunsting ("Carl") filed suit against Kunz-Freed, asserting various claims and causes of action, often referred to by various parties as "malpractice claims" (although said term may not actually appear in Carl's filings). Originally filed in District Court, the malpractice claims were eventually transferred to this Court and are now pending in the -403 proceeding.
- Prior to the transfer, Kunz-Freed filed a Motion for Summary Judgment, based in part on deposition testimony obtained from Carl, also prior to the transfer. Before Kunz-Freed's Motion could be considered, Carl resigned his position as executor of the estates based on the representation that he no longer had capacity to serve.
- Subsequently, Amy and Curtis, each sought to be named as successor executor. Carl joined Curtis in opposing Amy's appointment (Will-contest notwithstanding), and as these issues were considered by the parties and the Court, an open question arose as to whether the malpractice claims, whether meritorious or not, belonged to the estates (to be "controlled" by the successor executor) or by the Trust via pour-over Wills (and therefore "controlled" by the Co-Trustees). On information and belief, the question remains unaddressed/unresolved by Kunz-Freed, the Co-Trustees, Carl, Curtis or anyone else connected to these matters.
- Running parallel to the -403 proceeding, the Co-Trustees successfully pursued a Motion for Summary Judgment against Curtis in this 401-proceeding. As a result, per the terms of the Trust/Trust Documents, Curtis was found to have forfeited her beneficiary interest, which per the terms of the Trust/Trust Documents was (colloquially) to have been absorbed by the Trust and treated as if Curtis had predeceased her parents. Neither Curtis, nor any of her heirs or beneficiaries has an interest in any portion of the Trust's assets, including without limitation its cash, its real property, or even the malpractice claims.
- The Court also denied Curtis's Bill of Review, which had resided within the -404 proceeding.
- Curtis has initiated appellate proceedings stemming from the summary judgment and denial of the Bill of Review. When last before this Court, the Court was advised that the Court of Appeals had placed Curtis's appeal on a dismissal docket unless certain actions were taken by Curtis by a date certain. She met this particular deadline and the appeal remains pending.

II. WHERE WE ARE

- With regard to Curtis's appeal, the appellate court has requested additional briefing from Carl and the Co-Trustees. The additional briefing is due on June 28, 2024 and involves the question of whether the appellate court has jurisdiction over Curtis's untimely appeal of this Court's allegedly void orders. The answer is the appellate court does ***not*** have jurisdiction over Curtis' untimely appeal, and the hope is that the appellate court will quickly reach the same conclusion.
- Presumably, upon receipt and review of the additional briefing, Curtis's appeal will be dismissed. This will (again) confirm this Court's jurisdiction and Curtis's forfeited beneficiary interest.
- Notwithstanding the last vestiges of Curtis's chances for a successful appeal, the Co-Trustees continue to pursue a resolution of any remaining claims pending in these matters, including those at issue in the -403. The Court can see examples of the Co-Trustees' progress via recent filings such as the Motion(s) for Authority to Sell the Iowa Farm, and the Motion for Authority to Disburse \$26,000.00.
- As has been previously addressed with the Court, the Co-Trustees continue to maintain a "reserve" of sorts in the unlikely event of a successful Curtis appeal and a "reinstatement" (for lack of a better word) of her beneficiary status.
- The Co-Trustees remain in contact with Carl and Carole/Carole's counsel to fully resolve any remaining issues, with an eye towards a final resolution/distribution of the Trust.

III. WHERE WE'RE GOING

Notwithstanding ongoing progress, the outcome of the Curtis appeal remains a critical benchmark for final resolution/distribution. If the appeal is dismissed, the Co-Trustees anticipate an "opening of the floodgates," as it were, towards final resolution/distribution. Whether by agreement of the parties and/or one or more motions for authority, the Co-Trustees will be able to proceed towards final resolution/distribution, including a resolution of the -403.

For example, on the assumption that the malpractice claims are a Trust asset, the Co-Trustees would be able to file a motion for authority to dismiss, a motion for authority to distribute the "asset" to Carl for further pursuit, or take other actions as may be necessary or warranted. On the other hand, if the malpractice claims are Estate assets, then presumably, a dismissed Curtis

appeal ends her effort, ability or standing to be named successor executor. This opens the door to several options, including Carl's withdrawal of his opposition to Amy serving as successor executor, the siblings selecting a successor executor by agreement, or other such action.

In fact, it may be that only Carl or Carole is able to pursue the malpractice claims. To the extent they stem from various actions taken by Kunz-Freed relative to drafting and implementing the Trust documents the Court is reminded that the summary judgment as to Curtis was based, at least in part, on her conduct relative to the Trust documents' content. Until the Curtis appeal is resolved, it may be that the Co-Trustees cannot act and/or that no one can yet know who, if anyone, has the right to pursue the malpractice claims until the Curtis appeal is resolved.

Ultimately, just as the Co-Trustees continue to consider the possibility, however slight, that Curtis's beneficiary status may be reinstated, through their implementation of a reserve, so too should this Court consider the benefits of maintaining the status quo as to the -403 generally, and the open question of successor executor, specifically. Until or unless agreements can be reached among the parties, including Kunz-Freed, regarding the resolution of either issue and a motion for authority can be submitted and approved, there is no method for creating a "reserve" relative to these issues and thus neither should be determined until after the Curtis appeal is resolved.

Respectfully submitted,

GRIFFIN & MATTHEWS

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 26th day of June 2024, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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