

PROBATE COURT 4

NO. 412,249-401

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

CARL HENRY BRUNSTING, § IN PROBATE COURT
Individually and as independent §
executor of the estates of Elmer H. §
Brunsting and Nelva E. Brunsting §
§

v. §

ANITA KAY BRUNSTING f/k/a §
ANITA KAY RILEY, individually, § NUMBER FOUR (4) OF
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 § HARRIS COUNTY, TEXAS

OBJECTION TO PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

COMES NOW, Carole Ann Brunsting ("Carole Brunsting"), daughter of Nelva E. Brunsting, Deceased ("Decedent"); a beneficiary of the Estate of Nelva E. Brunsting, Deceased ("Estate"); and a beneficiary of The Brunsting Family Living Trust ("Trust"), and files this Objection to Plaintiff's Motion for Distribution of Trust Funds filed by Plaintiff, Candace Louise Curtis ("Plaintiff"):

I.
BACKGROUND

1. Plaintiff first filed her suit against her siblings, Anita Brunsting, Amy Brunsting, and Carole Brunsting, regarding the Trust in United States District Court for the Southern District of Texas.¹ Plaintiff's suit was subsequently transferred to this Court on June 4, 2014, pursuant to an Order of Remand entered by the Federal Court.
2. Plaintiff's Petition was filed in bad faith, without just cause, and frivolously – especially with respect to filing her Petition in federal court knowing there was already litigation pending on the same issues in this Court.
3. On or about October 20, 2014, Plaintiff filed her Motion for Distribution of Trust Funds ("Motion") requesting that this Court authorize the payment of \$24,171.26 out of the Trust for attorney's fees and expenses allegedly incurred by her in prosecuting her frivolous Petition. Plaintiff's Motion, like her Petition, is wholly without merit, filed in bad faith, and is detrimental to Carole Brunsting, who is defending against the lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit she is pursuing in bad faith.

¹ Cause No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting, et. al; In the United States District Court for the Southern District of Texas.

II. OBJECTIONS

4. Carole Brunsting objects to Plaintiff's Motion because (1) the Trust is currently the subject of this litigation; (2) Plaintiff's suit and Motion have been brought in bad faith and without just cause; (3) and Plaintiff has proffered no evidence that the attorney's fees and expenses allegedly incurred by her and subject of her Motion are reasonable and necessary.

Accordingly, Plaintiff's Motion should be denied.

5. First, this case involves, in large part, questions regarding the administration and distribution of the Trust. Until the litigation pertaining to the Trust is resolved, distributions from the Trust should only be made for necessities, such as paying taxes on Trust assets. Plaintiff should not be allowed to fund her lawsuit pending against other Trust beneficiaries with Trust funds.

6. Second, Plaintiff's Petition was brought in bad faith, without just cause, and frivolously. Unless and until Plaintiff is found to have brought her lawsuit in good faith and with just cause, she is not entitled to the payment of her attorney's fees and expenses out of the Trust funds. To allow Plaintiff access to Trust funds to subsidize her lawsuit would substantially prejudice Carole Brunsting, who is defending against the lawsuits in this cause out of her own funds.

7. Finally, Plaintiff has not provided one document or invoice to support her Motion. Plaintiff seeks a distribution to pay her attorney's fees and expenses allegedly incurred in this proceeding in the amount of \$24, 171.26, but there is no backup to support this amount. Carole Brunsting demands that the backup, including invoices, be produced by Plaintiff before the hearing on Plaintiff's Motion.

WHEREFORE, PREMISES CONSIDERED, Carole Brunsting prays that the Court deny Candace Louise Curtis' Motion for Distribution of Trust Funds and for all other relief to which she may show herself justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES,
A Professional Corporation

By: 

DARLENE PAYNE SMITH
State Bar No. 18643525
dsmith@craincaton.com
COURTNEY MCMILLAN LYSSY
State Bar No. 24060271
clyssy@craincaton.com
LORI A. WALSH
State Bar No. 24084038
lwalsh@craincaton.com
Five Houston Center
1400 McKinney, Suite 1700
Houston, Texas 77010
(713) 658-2323
(713) 658-1921 (Facsimile)

Attorneys for Carole Ann Brunsting

11142014:0904:P0042

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was forwarded to:


Ms. Bobbie G. Bayless
BAYLESS & STOKES
2931 Ferndale
Houston, Texas 77098
(713) 522-2218 (facsimile)

Mr. Jason Cox
Ms. Nicole Sain Thornton
OSTROM SAIN
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006

Ms. Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904

Ms. Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132

by facsimile, hand delivery, and/or certified mail, return receipt requested, on this 13th day of November, 2014.


DARLENE PAYNE SMITH
COURTNEY MCMILLAN LYSSY
LORI A. WALSH

1142014:0904:P0043

NO. 412,249-401

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

CARL HENRY BRUNSTING, § IN PROBATE COURT
Individually and as independent §
executor of the estates of Elmer H. §
Brunsting and Nelva E. Brunsting §

v. §

ANITA KAY BRUNSTING f/k/a §
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 § HARRIS COUNTY, TEXAS

ORDER DENYING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

On this day the Court considered Plaintiff's Motion for Distribution of Trust Funds filed by Candace Louise Curtis, and the Court, having considered the Motion, any response thereto, and the arguments of counsel, finds and is of the opinion that the Motion should be DENIED. It is therefore,

ORDERED, that Candace Louise Curtis's Motion for Distribution of Trust Funds is DENIED.

SIGNED on this _____ day of _____, 2014.

JUDGE PRESIDING

APPROVED AS TO FORM:

CRAIN, CATON & JAMES,
A PROFESSIONAL CORPORATION

By: 

DARLENE PAYNE SMITH

State Bar No. 18643525

dsmith@craincaton.com

LORI A. WALSH

State Bar No. 24084038

lwalsh@craincaton.com

1401 McKinney, Suite 1700

Houston, Texas 77010-4035

(713) 658-2323

(713) 658-1921 Facsimile

Attorneys for Carole Ann Brunsting