

**DATA-ENTRY  
PICK UP THIS DATE**

FILED  
12/9/2014 7:11:56 AM  
Stan Stanart  
County Clerk  
Harris County

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, §  
as attorney-in-fact for Nelva E. § NUMBER FOUR (4) OF  
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

12102014:0944: P0055

**OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION  
OF TRUST FUNDS**

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

**I.  
BACKGROUND**

1. On or about April 9, 2013, Plaintiff, Carl Henry Brunsting ("Plaintiff"), filed his Petition for Declaratory Judgment for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief ("Petition") against his sisters, Amy Brunsting, Anita Brunsting, and Carole Brunsting, in various capacities. Plaintiff's lawsuit against Carole Brunsting was filed in bad faith, without just cause, and frivolously.
2. On or about November 7, 2014, Plaintiff filed his own Motion for Distribution of Trust Funds ("Motion") to pay his attorney's out of the Trust. Plaintiff's Motion, like his Petition, is wholly without merit, filed in bad faith, and is detrimental and unfairly prejudicial to Carole Brunsting, who is defending against the various lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit he is pursuing in bad faith.

**II.  
OBJECTIONS**

3. 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 him and subject of his Motion are reasonable and necessary. In

fact, Plaintiff has failed to produce a single invoice or proof of payment for attorney's fees and costs allegedly incurred by him. Accordingly, Plaintiff's Motion should be denied.

4. 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 his lawsuit pending against other Trust beneficiaries with Trust funds.

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


6. Finally, Plaintiff has not provided one document or invoice to support his Motion. Plaintiff seeks a distribution to pay his attorney's fees and expenses allegedly incurred in this proceeding in an unspecified amount of, but there is no backup to support a single penny sought by Plaintiff. Carole Brunsting demands that the backup, including invoices and any payments thereon, be produced by Plaintiff before the hearing on Plaintiff's Motion.

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

12102014:0944:P0058

Respectfully submitted,

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  
Five Houston Center  
1400 McKinney, Suite 1700  
Houston, Texas 77010  
(713) 658-2323  
(713) 658-1921 (Facsimile)

Attorneys for Carole Ann Brunsting

12102014:0944:P0059

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 9<sup>th</sup> day of  
December, 2014.

  
\_\_\_\_\_  
DARLENE PAYNE SMITH  
LORI A. WALSH

12102014:0944:PO060

NO. 412,249-401

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

---

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

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	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

**ORDER DENYING CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS**

On this day the Court considered Carl Brunsting's Motion for Distribution of Trust Funds 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,

12102014:0944:PO061

ORDERED, that Carl Brunsting'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: \_\_\_\_\_

*Lori A. Walsh*  
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