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PROBATE COURT 4

FILED  
7/31/2015 4:08:49 PM  
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NO. 412,249-401

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

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 CARL HENRY BRUNSTING, et al

v.

ANITA KAY BRUNSTING, et al

**DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S  
MOTION FOR PROTECTIVE ORDER**

Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting, file their response to the Motion for Protective Order filed by Drina Brunsting, as attorney-in-fact for Carl Brunsting, and would respectfully show the Court as follows:

**I. Summary of the Argument**

It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee. Thus, the evidence essentially destroys most of Drina's claims in this proceeding.

Drina's "motion for protective order" is not a protective order in any sense of the term. The relief Drina seeks can fairly be summarized as follows: sworn testimony regarding the recordings; turnover to Drina's counsel of all copies of the recordings; and a ruling the recordings cannot be used in this proceeding. Thus, Drina's motion is some convoluted discovery/injunctive/admissibility relief without any legal authority, be it a statute, rule, or case law, upon which this Court could reasonably rely to grant her relief.

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Finally, and most importantly, Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought. Accordingly, the Motion must be denied.

## II. Argument & Authorities

### A. Protective Orders

Protective Orders are described in Texas Rule of Civil Procedure 192.6, which provides:

(a) Motion. A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought. A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.

(b) Order. To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may - among other things - order that:

- (1) the requested discovery not be sought in whole or in part;
- (2) the extent or subject matter of discovery be limited;
- (3) the discovery not be undertaken at the time or place specified;
- (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court;
- (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

In the case at hand, Drina propounded discovery to Anita, in which she complied by providing discovery responses. Drina now seeks a protective order against discovery she

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propounded against an opposing party. It is nonsense. There is nothing in the rules nor any other legal authority that allows a party to move for a protective order against that party's own discovery requests and the responses thereto.

With respect to the information Drina seeks regarding the recordings, Drina provides no reason why she would be unable to obtain such information through normal discovery channels such as interrogatories or deposition. Defendants were unable to find any reported cases where a Court compelled a party to create an affidavit at the opposing parties' request. Drina's motion appears to be another boondoggle Drina created to needlessly drive up litigation costs.

**B. Alleged Illegal Wiretapping**

The chief authority upon which Drina's motion is based is the Texas Civil Wire Tap Act, Tex. Civ. Prac. & Rem. Code, Title 123. In Texas, where one party consents, the Texas Civil Wire Tap Act is inapplicable. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex.App.—Corpus Christi 1986, writ ref'd n.r.e). With respect to the first recording between Carl and Nelva, there is no evidence that Nelva did not consent to the recording.

With respect to the remaining conversations between Carl and Drina, at the time of the recordings Carl and Drina intended to divorce. It seems perfectly logical that Carl consented to the recordings at that time.

Further, on information and belief, Carl was aware of all of the video recordings made. Additionally, on information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the call and/or which triggered in accordance with its own operation. Either way, one – if not both – participants had full knowledge that he/she was being recorded.

Now that Carl and Drina have apparently reconciled, Carl's counsel alleges neither

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consented to the recordings. There is no evidence to support the allegation. In short, Drina has not proven that both her and Carl did not consent to the recordings at the time they were made.

**C. Drina's requests are merely an attempt to hide evidence that is damaging to her/Carl's claims.**

One of the underlying tenets of Carl/Drina/Candace's claims is that certain actions undertaken by Nelva and/or by Anita, Amy or Carole were improperly taken. Unfounded and insupportable allegation of incompetence, undue influence, etc. abound. Yet now, we have Drina taking efforts to suppress exculpatory evidence. The evidence Drina seeks to hide constitutes evidence that adds context and color to decisions made and actions taken. It is evidence that will assist the fact-finder in confirming what Anita, Amy or Carole already know to be true. Specifically, that the actions undertaken by Nelva and/or by Anita, Amy or Carole were proper and justified in light of the circumstances as they were or appeared to be at the time.

**D. Proposed Agreed Protective Order**

Defendants might be willing to enter into a standard joint agreed protective order, such as the one attached hereto as Exhibit A, which would prevent the parties from distributing materials incident to this litigation to third-parties. However, thus far, Drina has not consented to proceed in this manner. Defendants otherwise oppose creating new, weird, atypical rules unfounded in Texas jurisprudence.

**III. Prayer**

For these reasons, Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting pray that Carl Henry Brunsting's Motion for Protective Order be denied. Additionally, Defendants pray for such other and further relief (general and special, legal and equitable) to which they may be entitled, collectively, individually or in any of their representative capacities.

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Respectfully submitted,

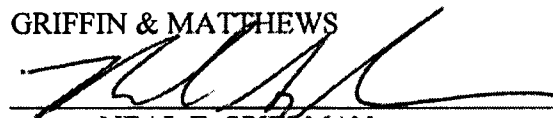
/s/ Brad Featherston

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GRIFFIN & MATTHEWS

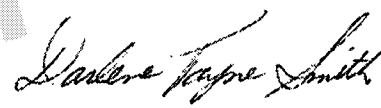


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*ATTORNEYS FOR CAROLE ANN BRUNSTING*



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 3<sup>rd</sup> day of July, 2015, to the following in the manner set forth below:

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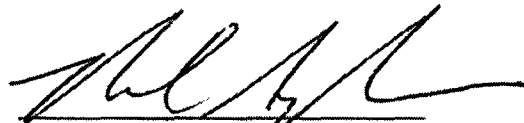
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