

**ENTERED**

September 30, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS  
and  
CARL BRUNSTING,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, AMY RUTH  
BRUNSTING and DOES 1-100, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-0592

**ORDER**

Before the Court is the plaintiff’s, Candace Louise Curtis, *ex parte* motion for relief pursuant to Federal Rules of Civil Procedure, Rule 60(b)(6) and (d)(3). It is the plaintiff’s position that the “judgment” to remand and/or close this case constituted an abuse of discretion and was clearly erroneous. *See Kennedy v. Texas Utilities*, 179 F.3d 258, 265 (5th Cir. 1999)(quotation omitted). The Court is of the opinion and holds that, while remand to the state court (Probate Court) was an incorrect method or mode for transmission, the order accomplished what was requested by the plaintiff [DE 109] and the Court now lacks jurisdiction.

The Court is also of the opinion that the plaintiff’s *ex parte* motion for relief was not timely filed because:

- a. the plaintiff had knowledge of (or a means to discover) the complained of activities in 2014, as those activities were occurring;
- b. the plaintiff had knowledge of (or a means to discover) the complained of activities throughout 2014 and 2015, while represented by counsel;

- c. the plaintiff had knowledge of the complained of activities in 2016; and did not pursue her claims for Rule 60 relief within a reasonable time;
- d. the complained of actions as described in the Ex Parte Motion for Relief, including this Court's May 2014 transfer/remand [Doc. 112], do not constitute a Fraud Upon the Court as the complained of actions do not reveal the existence of a "grave miscarriage of justice" and do not impact the integrity of the judicial process, and further have already been addressed in Civil Action No. 4:16-cv-01969 and determined to be frivolous, "fantastical" and "often nonsensical";
- e. the plaintiff's *ex parte* motion for relief is presented as a means of "forum hopping" her jurisdictional arguments, as previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401;
- f. the transfer/remand of the plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to the plaintiff's inclusion of additional parties, but also to avoid the possibility of conflicting judgments; that the use of the term "remand" was synonymous with a general use of the word "transfer"; or, alternatively, constitutes harmless error as the same result could have occurred by other means, methods, procedures and mechanisms;
- g. this Court ceded jurisdiction of the plaintiff's claims and its Orders, including without limitation the Orders represented by Doc. 45 and Doc. 87, to Probate Court Number Four of Harris County, Texas; and
- h. the preliminary injunction issued by this Court [Doc. 45] is to be enforced in Probate Court Number Four of Harris County, Texas, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, and which determination may include modification or termination as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas. It is not a "final judgment" of this Court, and did not require or contemplate the distribution of trust income to beneficiaries prior to the final resolution of the disputes between the parties.

It is, therefore, ORDERED that the plaintiff's *ex parte* motion is Denied.

It is so Ordered.

SIGNED on this 23<sup>rd</sup> day of September, 2020.



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Kenneth M. Hoyt  
United States District Judge