

Case No. 20-20566

**In the United States Court of Appeals
For the Fifth Circuit**

CANDACE LOUISE CURTIS,

Plaintiff - Appellant

v.

ANITA KAY BRUNSTING; AMY RUTH BRUNSTING,

Defendants - Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION CASE #: 4:12-cv-00592

APPELLANTS RECORD EXCERPTS

Candace Louise Curtis
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Appellant pro se

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TAB 1

**U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:12-cv-00592
Internal Use Only**

Candace Louise Curtis v. Anita Kay Brunsting et al **Case remanded to Harris County Probate Court No. 4.**

Assigned to: Judge Kenneth M. Hoyt

Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012

Date Terminated: 09/23/2020

Jury Demand: Plaintiff

Nature of Suit: 370 Other Fraud

Jurisdiction: Diversity

Special Master

William West

Accountant

represented by **Timothy Aaron Million**

Husch Blackwell

600 Travis Street

Suite 2350

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ATTORNEY TO BE NOTICED

Plaintiff

Candace Louise Curtis

represented by **Candice Lee Schwager**

State Bar Information

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Fax: 713-456-2453

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Plaintiff

Carl Brunsting

Necessary Party and Involuntary Plaintiff

represented by **Carl Brunsting**

PRO SE

V.

Defendant

Anita Kay Brunsting

represented by **Bernard Lilse Mathews , III**
Green and Mathews LLP
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281-580-8100
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TERMINATED: 02/20/2013
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LEAD ATTORNEY

Defendant

Amy Ruth Brunsting

represented by **Bernard Lilse Mathews , III**
(See above for address)
TERMINATED: 02/20/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George William Vie , III
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Stephen A Mendel
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Does 1-100

Defendant

Carole Ann Brunsting

Defendant

Candace L. Kunz-freed

Defendant

Albert E. Vacek Jr.

Defendant

Vacek & Freed, PLLC

Defendant

The Vacek Law Firm PLLC

Defendant

Bernard Lilse Mathews III

Date Filed	#	Docket Text
02/27/2012	1 (p.17)	PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee \$ 350) filed by Candace Louise Curtis. (Attachments: # 1 (p.17) Continuation, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation, # 11 (p.490) Continuation, # 12 (p.491) Continuation, # 13 (p.492) Continuation)(dterrell,) Modified on 2/27/2012 (dterrell,). (Entered: 02/27/2012)
02/27/2012	2 (p.425)	PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	3 (p.428)	INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	4 (p.432)	REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	5 (p.436)	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012	6 (p.437)	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Civil Filing fee re: 1 (p.17) Complaint,, : \$350.00, receipt number CC003143, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Summons Issued as to Amy Ruth Brungsting, Anita Kay Brunsting, filed.(dterrell,) (Entered: 02/27/2012)

02/28/2012	<u>7 (p.438)</u>	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus,) (Entered: 02/28/2012)
03/01/2012	<u>8 (p.443)</u>	ORDER denying the application for a temporary restraining order and for injunction.(Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/01/2012)
03/05/2012	<u>9 (p.444)</u>	Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # <u>1 (p.17)</u> cover letter) (saustin,) (Entered: 03/05/2012)
03/06/2012	<u>10 (p.446)</u>	EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # <u>1 (p.17)</u> Affidavit Affidavit of Amy Brunsting, # <u>2 (p.425)</u> Exhibit Property Appraisal, # <u>3 (p.428)</u> Exhibit Sale Contract, # <u>4 (p.432)</u> Exhibit Tax Appraisal, # <u>5 (p.436)</u> Supplement Request for Hearing, # <u>6 (p.437)</u> Proposed Order Proposed Order)(Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<u>11 (p.490)</u>	Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	<u>12 (p.491)</u>	NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012)
03/08/2012	<u>13 (p.492)</u>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lipse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/08/2012	<u>14 (p.493)</u>	ORDER OF DISMISSAL (<i>Sua Sponte</i>) re: <u>10 (p.446)</u> EMERGENCY MOTION, <u>11 (p.490)</u> Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a <i>lis pendens</i> has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/09/2012	<u>15 (p.495)</u>	Plaintiff's Answer to <u>11 (p.490)</u> Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebertsky,) (Entered: 03/12/2012)
03/12/2012	<u>16 (p.505)</u>	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: <u>14 (p.493)</u> Order of Dismissal, by Candace Louise Curtis (Filing fee \$ 455), filed.(mlothmann) (Entered: 03/12/2012)
03/16/2012	<u>17 (p.507)</u>	Notice of Assignment of USCA No. 12-20164 re: <u>16 (p.505)</u> Notice of Appeal, filed.(sguevara,) (Entered: 03/16/2012)
03/26/2012	<u>18 (p.509)</u>	Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: <u>16 (p.505)</u> Notice of Appeal, filed. (Attachments: # <u>1 (p.17)</u> Order Dismissal, # <u>2 (p.425)</u> Notice of Appeal, # <u>3 (p.428)</u> Docket sheet, # <u>4 (p.432)</u> Motion IFP)(Ifilmore,) (Entered: 03/26/2012)

03/30/2012		USCA Appeal Fees received \$ 455, receipt number HOU022939 re: <u>16 (p.505)</u> Notice of Appeal, filed.(klove,) (Entered: 03/30/2012)
04/12/2012	<u>19</u> <u>(p.522)</u>	Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: <u>16 (p.505)</u> Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012)
04/26/2012		(Court only) The Record on Appeal submission has been made, filed. (blacy,) (Entered: 04/26/2012)
04/26/2012		The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: <u>16 (p.505)</u> Notice of Appeal USCA No. 12-20164, filed.(blacy,) (Entered: 04/26/2012)
05/18/2012		(Court only) ***(PRIVATE ENTRY) CD containing copy of record forwarded to Candace Curtis, filed. (glyons) (Entered: 05/18/2012)
08/16/2012	<u>20</u> <u>(p.524)</u>	Transmittal Letter on Appeal Certified re: <u>16 (p.505)</u> Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler,) (Additional attachment(s) added on 8/17/2012: # <u>1 (p.17)</u> UPS Tracking #) (hler,). (Entered: 08/16/2012)
08/20/2012	<u>21</u> <u>(p.526)</u>	Transmittal Letter on Appeal Certified re: <u>16 (p.505)</u> Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lipse Mathews, III, filed.(hler,) (hler,). (Entered: 08/20/2012)
02/05/2013	<u>22</u> <u>(p.527)</u>	JUDGMENT of USCA for the Fifth Circuit re: <u>16 (p.505)</u> Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	<u>23</u> <u>(p.528)</u>	Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	<u>24</u> <u>(p.529)</u>	OPINION of USCA for the Fifth Circuit re: <u>16 (p.505)</u> Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav,) (Entered: 02/05/2013)
02/06/2013	<u>25</u> <u>(p.535)</u>	NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios,) (Entered: 02/06/2013)
02/17/2013	<u>26</u> <u>(p.536)</u>	NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # <u>1 (p.17)</u> Proposed Order)(Vie, George) (Entered: 02/17/2013)
02/19/2013	<u>27</u> <u>(p.540)</u>	ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for

		3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013)
02/20/2013	<u>28</u> (p.541)	ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/20/2013)
02/20/2013		(Court only) *** Attorney Bernard Lilse Mathews, III terminated. (chorace) (Entered: 02/20/2013)
03/01/2013	<u>29</u> (p.542)	ANSWER to <u>1</u> (p.17) Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013)
03/05/2013	<u>30</u> (p.551)	Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock,) (Entered: 03/05/2013)
03/11/2013	<u>31</u> (p.552)	CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps,) (Entered: 03/11/2013)
03/11/2013		(Court only) ***Party Computershare Investor Services, LLC, Edward Jones Securities, The Northern Trust Company and Bank of America added. (mlothmann,) (Entered: 03/13/2013)
03/14/2013	<u>32</u> (p.555)	REPLY to <u>29</u> (p.542) Answer to Complaint, filed by Candace Louise Curtis. (sclement,) (Entered: 03/20/2013)
03/14/2013	<u>33</u> (p.573)	CERTIFICATE OF SERVICE of <u>32</u> (p.555) Reply by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/14/2013	<u>34</u> (p.574)	AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed.(sclement,) (Entered: 03/20/2013)
03/14/2013	<u>35</u> (p.577)	Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement,) (Additional attachment(s) added on 3/20/2013: # <u>1</u> (p.17) Proposed Order) (sclement,). (Entered: 03/20/2013)
03/14/2013	<u>36</u> (p.3060)	EXHIBITS re: <u>35</u> (p.577) MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/14/2013		(Court only) 1 CD forwarded to filerom related to <u>32</u> (p.555) <u>33</u> (p.573) <u>34</u> (p.574) <u>35</u> (p.577) & <u>36</u> (p.3060) ***(PRIVATE ENTRY), filed. (smurdock,) (Entered: 03/20/2013)
03/22/2013	<u>37</u> (p.591)	NOTICE of Setting as to <u>35</u> (p.577) MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013)
03/29/2013		***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013)
04/01/2013	<u>38</u> (p.592)	Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps,) (Entered: 04/02/2013)

04/04/2013	<u>39</u> <u>(p.599)</u>	RESPONSE in Opposition to <u>35 (p.577)</u> MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1 (p.17)</u> Proposed Order)(Vie, George) (Entered: 04/04/2013)
04/09/2013	40	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resolving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace,) (Entered: 04/09/2013)
04/09/2013	<u>42</u> <u>(p.633)</u>	Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013)
04/10/2013	<u>41</u> <u>(p.610)</u>	NOTICE of filing of state court lawsuit against parties by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013)
04/11/2013	<u>43</u> <u>(p.634)</u>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # <u>1 (p.17)</u> Proposed Order)(Vie, George) (Entered: 04/11/2013)
04/11/2013	<u>44</u> <u>(p.638)</u>	ORDER granting <u>43 (p.634)</u> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013)
04/19/2013	<u>45</u> <u>(p.639)</u>	MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013)
04/19/2013	<u>46</u> <u>(p.644)</u>	NOTICE of Agreed CPA Firm pursuant to Court's Order for Accounting by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013)
04/29/2013	<u>47</u> <u>(p.646)</u>	ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013)
05/01/2013	<u>48</u> <u>(p.647)</u>	STRICKEN Per # 57 Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor,) (Entered: 05/01/2013)
05/01/2013	<u>49</u> <u>(p.680)</u>	MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013)
05/01/2013	<u>50</u> <u>(p.690)</u>	Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # <u>1 (p.17)</u> Exhibit, # <u>2 (p.425)</u> Exhibit)(olindor) (Entered: 05/01/2013)

05/01/2013	<u>51</u> (p.740)	NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	<u>52</u> (p.741)	NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	<u>53</u> (p.742)	NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013)
05/01/2013	<u>54</u> (p.743)	Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013)
05/09/2013		(Court only) ***Party William West added. (chorace) (Entered: 05/09/2013)
05/09/2013	<u>55</u> (p.744)	ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting <u>47</u> (p.646) .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013)
05/21/2013	<u>56</u> (p.747)	RESPONSE in Opposition to <u>49</u> (p.680) MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1</u> (p.17) Proposed Order)(Vie, George) (Entered: 05/21/2013)
05/22/2013	<u>57</u> (p.764)	ORDER denying <u>49</u> (p.680) Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint <u>48</u> (p.647) was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/22/2013)
06/06/2013	<u>58</u> (p.765)	MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # <u>1</u> (p.17) Appendix Exhibits 1 and 2, # <u>2</u> (p.425) Proposed Order)(Vie, George) (Entered: 06/06/2013)
06/10/2013	<u>59</u> (p.772)	ORDER granting <u>58</u> (p.765) Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013)
07/15/2013	<u>60</u> (p.773)	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013)
08/05/2013	<u>61</u> (p.774)	ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013)
08/08/2013	<u>62</u> (p.775)	NOTICE - <i>Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013</i> re: <u>55</u> (p.744) Order, <u>61</u> (p.774) Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013)
08/08/2013	<u>63</u> (p.3091)	Sealed Event, filed. (Entered: 08/08/2013)

08/26/2013	<u>64</u> <u>(p.813)</u>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # <u>1</u> (p.17) Proposed Order)(Vie, George) (Entered: 08/26/2013)
08/27/2013	<u>65</u> <u>(p.822)</u>	MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # <u>1</u> (p.17) Proposed Order)(Vie, George) (Entered: 08/27/2013)
08/27/2013	<u>66</u> <u>(p.833)</u>	ORDER granting <u>64</u> (p.813) Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013)
08/27/2013	<u>67</u> <u>(p.835)</u>	RESPONSE to Report of Master, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1</u> (p.17) Appendix Tab 1, # <u>2</u> (p.425) Appendix Tab 2)(Vie, George) (Entered: 08/27/2013)
08/28/2013	<u>68</u> <u>(p.852)</u>	ORDER for Expedited Response; Motion-related deadline set re: <u>65</u> (p.822) MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/28/2013)
08/29/2013	<u>69</u> <u>(p.853)</u>	RESPONSE to <u>62</u> (p.775) Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # <u>1</u> (p.17) Proposed Order, # <u>2</u> (p.425) Proposed Order). (CD filed in Clerks Office.)(sscotch,) (Entered: 08/29/2013)
08/29/2013	<u>70</u> <u>(p.862)</u>	This document is a duplicate of DE <u>69</u> (p.853) ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # <u>1</u> (p.17) Proposed Order, # <u>2</u> (p.425) Proposed Order)(sscotch,) (Entered: 08/29/2013)
08/30/2013	<u>71</u> <u>(p.871)</u>	PROPOSED ORDER re: <u>67</u> (p.835) Response, filed.(Vie, George) (Entered: 08/30/2013)
09/03/2013	<u>72</u> <u>(p.872)</u>	OBJECTIONS to <u>65</u> (p.822) MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	<u>73</u> <u>(p.883)</u>	OBJECTIONS to <u>62</u> (p.775) Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	<u>74</u> <u>(p.887)</u>	Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013)
09/03/2013	75	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013)
09/03/2013	<u>76</u> <u>(p.900)</u>	NOTICE of Setting as to <u>74</u> (p.887) MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before

		Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013)
09/03/2013	<u>77</u> (p.901)	ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013	<u>78</u> (p.902)	ORDER granting <u>65</u> (p.822) Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013		(Court only) ***Motion(s) terminated as #69 is not a motion: <u>70</u> (p.862) MOTION Application for Orders. (chorace) (Entered: 09/03/2013)
09/18/2013	<u>79</u> (p.2908)	TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner,) (Entered: 09/18/2013)
09/19/2013	<u>80</u> (p.903)	Notice of Filing of Official Transcript as to <u>79</u> (p.2908) Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013)
09/23/2013	<u>81</u> (p.904)	NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/23/2013)
09/23/2013	<u>82</u> (p.905)	RESPONSE in Opposition to <u>74</u> (p.887) MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1</u> (p.17) Appendix)(Vie, George) (Entered: 09/23/2013)
09/23/2013	<u>83</u> (p.920)	PROPOSED ORDER re: <u>82</u> (p.905) Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013)
09/27/2013	<u>84</u> (p.2962)	TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013)
09/30/2013	<u>85</u> (p.921)	Notice of Filing of Official Transcript as to <u>84</u> (p.2962) Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013)
10/02/2013	86	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013)
10/03/2013	<u>87</u> (p.922)	ORDER denying <u>74</u> (p.887) Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013)
11/08/2013	<u>88</u> (p.924)	MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # <u>1</u> (p.17) Appendix Invoice, # <u>2</u> (p.425) Proposed Order)(Vie, George) (Entered: 11/08/2013)
11/12/2013	<u>89</u> (p.929)	ORDER granting <u>88</u> (p.924) Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013)

12/05/2013	<u>90</u> <u>(p.930)</u>	PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order)(sbejarano, 1) (Entered: 12/06/2013)
12/12/2013	<u>91</u> <u>(p.934)</u>	NOTICE of Setting as to <u>90 (p.930)</u> MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013)
12/18/2013	<u>92</u> <u>(p.935)</u>	RESPONSE to <u>90 (p.930)</u> MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order)(Vie, George) (Entered: 12/18/2013)
12/18/2013	<u>94</u> <u>(p.943)</u>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014)
12/30/2013	<u>93</u> <u>(p.939)</u>	Agreed PROPOSED ORDER re: <u>90 (p.930)</u> MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013)
01/06/2014	<u>95</u> <u>(p.944)</u>	NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014)
01/06/2014	<u>96</u> <u>(p.946)</u>	AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014)
02/24/2014	<u>97</u> <u>(p.948)</u>	NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014)
02/28/2014	<u>98</u> <u>(p.949)</u>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014)
02/28/2014		(Court only) ***March 3, 2014 Docket Call is terminated. (chorace) (Entered: 03/02/2014)
03/08/2014	<u>99</u> <u>(p.950)</u>	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # <u>1</u> <u>(p.17)</u> Appendix Exhibit A, # <u>2</u> <u>(p.425)</u> Proposed Order)(Vie, George) (Entered: 03/08/2014)
03/10/2014	<u>100</u> <u>(p.959)</u>	Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills <u>99 (p.950)</u> Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014)

03/26/2014	<u>101</u> <u>(p.960)</u>	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order)(Vie, George) (Entered: 03/26/2014)
03/27/2014	<u>102</u> <u>(p.963)</u>	ORDER granting <u>101</u> <u>(p.960)</u> Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014)
04/15/2014	<u>103</u> <u>(p.964)</u>	MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order)(Vie, George) (Entered: 04/15/2014)
04/16/2014	<u>104</u> <u>(p.967)</u>	ORDER granting <u>103</u> <u>(p.964)</u> Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014)
04/22/2014	<u>105</u> <u>(p.968)</u>	MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # <u>1</u> <u>(p.17)</u> Proposed Order)(Vie, George) (Entered: 04/22/2014)
04/22/2014	<u>106</u> <u>(p.975)</u>	ORDER granting <u>105</u> <u>(p.968)</u> Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014)
05/09/2014	<u>107</u> <u>(p.976)</u>	Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # <u>1</u> <u>(p.17)</u> Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<u>108</u> <u>(p.987)</u>	First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	<u>109</u> <u>(p.993)</u>	Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014)
05/12/2014	<u>110</u> <u>(p.998)</u>	Unopposed PROPOSED ORDER <i>Granting Motion for Leave to File First Amended Petition</i> re: <u>107</u> <u>(p.976)</u> Unopposed MOTION for Leave to File First Amended Petition, filed.(Ostrom, Jason) (Entered: 05/12/2014)
05/15/2014	<u>111</u> <u>(p.999)</u>	ORDER granting <u>107</u> <u>(p.976)</u> Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014	<u>112</u> <u>(p.1000)</u>	ORDER granting <u>109</u> <u>(p.993)</u> Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014		(Court only) Document(s) Sent by regular mail to Harris County Probate Court No. 4 re: Certified copy of <u>112</u> <u>(p.1000)</u> Order on Motion to Remand, filed. (glyons, 4) (Entered: 05/15/2014)
07/25/2016	<u>113</u> <u>(p.1002)</u>	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # <u>1</u> <u>(p.17)</u> Letter, # <u>2</u> <u>(p.425)</u> Proposed Order)(chorace) (Entered: 07/28/2016)
07/29/2016	<u>114</u> <u>(p.1005)</u>	ORDER denying <u>113</u> <u>(p.1002)</u> Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016)

08/03/2016	<u>115</u> (p.1006)	Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # <u>1</u> (p.17) Proposed Order)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<u>117</u> (p.1350)	Other EXHIBITS re: <u>115</u> (p.1006) MOTION., filed. (Attachments: # <u>1</u> (p.17) Continuation of Exhibits, # <u>2</u> (p.425) Continuation, # <u>3</u> (p.428) Continuation, # <u>4</u> (p.432) Continuation, # <u>5</u> (p.436) Continuation, # <u>6</u> (p.437) Continuation, # <u>7</u> (p.438) Continuation, # <u>8</u> (p.443) Continuation, # <u>9</u> (p.444) Continuation, # <u>10</u> (p.446) Continuation, # <u>11</u> (p.490) Continuation, # <u>12</u> (p.491) Continuation, # <u>13</u> (p.492) Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<u>118</u> (p.1714)	Other EXHIBITS re: <u>115</u> (p.1006) MOTION by Candace Louise Curtis., filed. (Attachments: # <u>1</u> (p.17) Exhibits Continue, # <u>2</u> (p.425) Continuation, # <u>3</u> (p.428) Continuation, # <u>4</u> (p.432) Continuation, # <u>5</u> (p.436) Continuation, # <u>6</u> (p.437) Continuation, # <u>7</u> (p.438) Continuation, # <u>8</u> (p.443) Continuation, # <u>9</u> (p.444) Continuation, # <u>10</u> (p.446) Continuation, # <u>11</u> (p.490) Continuation, # <u>12</u> (p.491) Continuation, # <u>13</u> (p.492) Continuation, # <u>14</u> (p.493) Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	<u>119</u> (p.2161)	Other EXHIBITS re: <u>115</u> (p.1006) MOTION by Candace Louise Curtis., filed. (Attachments: # <u>1</u> (p.17) Exhibits Continue, # <u>2</u> (p.425) Continuation, # <u>3</u> (p.428) Continuation, # <u>4</u> (p.432) Continuation, # <u>5</u> (p.436) Continuation, # <u>6</u> (p.437) Continuation, # <u>7</u> (p.438) Continuation, # <u>8</u> (p.443) Continuation, # <u>9</u> (p.444) Continuation, # <u>10</u> (p.446) Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<u>116</u> (p.1034)	Other EXHIBITS re: <u>115</u> (p.1006) MOTION., filed. (Attachments: # <u>1</u> (p.17) Exhibits, # <u>2</u> (p.425) Continuation, # <u>3</u> (p.428) Continuation, # <u>4</u> (p.432) Continuation, # <u>5</u> (p.436) Continuation, # <u>6</u> (p.437) Continuation, # <u>7</u> (p.438) Continuation, # <u>8</u> (p.443) Continuation, # <u>9</u> (p.444) Continuation, # <u>10</u> (p.446) Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	<u>120</u> (p.2461)	Plaintiff Candace Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # <u>1</u> (p.17) Exhibit Transcript, # <u>2</u> (p.425) Exhibit)(mxperez, 5) (Entered: 08/09/2016)
08/10/2016	<u>121</u> (p.2585)	PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016)
08/10/2016	<u>122</u> (p.2586)	PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # <u>1</u> (p.17) Proposed Order)(szellers, 7) (Entered: 08/11/2016)
03/09/2017	<u>123</u> (p.2591)	ORDER denying <u>122</u> (p.2586) Motion or Access to the Courts Electronic Filing System.(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 03/09/2017)
03/20/2019	<u>124</u> (p.2592)	MOTION for Order to Show Cause Why Defendants and Their Counsel Should not be Held in Contempt of this Court's Injunctive Orders by Candace Louise Curtis, filed. Motion Docket Date 4/10/2019. (sguevara, 4) (Entered: 03/20/2019)
04/15/2019	<u>125</u> (p.2657)	AFFIDAVIT of Candace Louise Curtis in Support re: <u>124</u> (p.2592) MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders, filed. (Attachments: # <u>1</u> (p.17) Proposed Order)(dwilkerson, 3) (Entered: 04/16/2019)

04/23/2019	<u>126</u> <u>(p.2670)</u>	NOTICE of Setting as to <u>124 (p.2592)</u> MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders. Parties notified. Telephone Conference set for 5/8/2019 at 09:15 AM before Judge Kenneth M Hoyt, filed. (On "Meet-Me" Line) (chorace) (Entered: 04/24/2019)
05/08/2019	<u>127</u> <u>(p.2671)</u>	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on May 8, 2019 at 9:15 a.m. Appearances: Candace Curtis (pro se). (Court Reporter: J. Sanchez) Before the Court is the pro se plaintiffs, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Courts Preliminary Injunction entered on April 19, 2013. The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied. (Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 05/09/2019)
07/17/2020	<u>128</u> <u>(p.2672)</u>	Ex Parte MOTION for Relief from Judgment by Candace Louise Curtis, filed. Motion Docket Date 8/7/2020. (Attachments: # <u>1 (p.17)</u> Exhibit Exhibit A, # <u>2 (p.425)</u> Exhibit Exhibit B, # <u>3 (p.428)</u> Exhibit Exhibit C, # <u>4 (p.432)</u> Exhibit Exhibit D, # <u>5 (p.436)</u> Exhibit Exhibit E, # <u>6 (p.437)</u> Exhibit Exhibit F, # <u>7 (p.438)</u> Exhibit G)(Schwager, Candice) (Entered: 07/17/2020)
07/17/2020	<u>129</u> <u>(p.2753)</u>	Ex Parte PROPOSED ORDER <i>on Rule 60 motion for relief</i> re: <u>128 (p.2672)</u> Ex Parte MOTION for Relief from Judgment, filed.(Schwager, Candice) (Entered: 07/17/2020)
07/17/2020	<u>130</u> <u>(p.2757)</u>	NOTICE of Appearance by Candice Leonard Schwager on behalf of Candace Louise Curtis, filed. (Schwager, Candice) (Entered: 07/17/2020)
08/13/2020	<u>131</u> <u>(p.2758)</u>	Joint RESPONSE in Opposition to <u>128 (p.2672)</u> Ex Parte MOTION for Relief from Judgment, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # <u>1 (p.17)</u> Exhibit Doc 87 Order, # <u>2 (p.425)</u> Exhibit Doc 127 Tel Hrg Notes, # <u>3 (p.428)</u> Exhibit Docket Report, # <u>4 (p.432)</u> Exhibit Order Remanding Case, # <u>5 (p.436)</u> Exhibit Curtis Ntc Substitution, # <u>6 (p.437)</u> Exhibit Curtis Correspondence, # <u>7 (p.438)</u> Exhibit Curtis RICO Complaint, # <u>8 (p.443)</u> Exhibit Plaintiff Curtis Answer to Ostrom Motion to Dismiss, # <u>9 (p.444)</u> Exhibit Order Dismissing RICO Case, # <u>10 (p.446)</u> Exhibit 5th Circuit Opinion, # <u>11 (p.490)</u> Exhibit Probate Ct Order Denying Curtis Pleas & Mtns, # <u>12 (p.491)</u> Exhibit Probate Court Order Sanctions Against Curtis, # <u>13 (p.492)</u> Exhibit Probate Court Order for Contempt, # <u>14 (p.493)</u> Exhibit Doc 45 Preliminary Injunction)(Mendel, Stephen) (Entered: 08/13/2020)
08/14/2020	<u>132</u> <u>(p.2847)</u>	PROPOSED ORDER re: <u>131 (p.2758)</u> Response in Opposition to Motion,, <u>128 (p.2672)</u> Ex Parte MOTION for Relief from Judgment, filed.(Mendel, Stephen) (Entered: 08/14/2020)
08/28/2020	<u>133</u> <u>(p.2850)</u>	Opposed MOTION to Reopen Case by Candace Louise Curtis, filed. Motion Docket Date 9/18/2020. (Attachments: # <u>1 (p.17)</u> Affidavit Affidavit Candace Curtis, # <u>2 (p.425)</u> Exhibit Docket sheet probate court, # <u>3 (p.428)</u> Exhibit Docket sheet missing matters, # <u>4 (p.432)</u> Exhibit Email from Assoc. Judge stating consolidation never occurred, # <u>5 (p.436)</u> Exhibit Bayless email re consolidation, # <u>6 (p.437)</u> Exhibit Trustee counsel email distribution denied, # <u>7 (p.438)</u> Exhibit Motion to Transfer, Answer and Contempt, # <u>8 (p.443)</u> Exhibit order re contempt)(Schwager, Candice) (Entered: 08/28/2020)
09/03/2020	<u>134</u> <u>(p.2898)</u>	NOTICE of Setting as to <u>128 (p.2672)</u> Ex Parte MOTION for Relief from Judgment. Parties notified. Telephone Conference set for 9/10/2020 at 09:00 AM before Judge

		Kenneth M Hoyt, filed. (On "Meet-Me" Line) (chorace) (Entered: 09/03/2020)
09/10/2020	<u>135</u> (p.2899)	AO 435 TRANSCRIPT REQUEST by Stephen A. Mendel for Transcript of Motion Hearing on 09/10/2020 before Judge Hoyt. Hourly turnaround requested. Court Reporter/Transcriber: Kathy Metzger, filed. (Mendel, Stephen) (Entered: 09/10/2020)
09/10/2020	<u>138</u> (p.2901)	ORDER FOLLOWING TELEPHONE CONFERENCE held on September 10, 2020 at 9:00 a.m. Appearances: Candice Curtis, Neal Spielman, Carol Brunsting, Amy Brunsting, Anita Brunsting Stephen A Mendel, Jason B Ostrom, Candice Lee Schwager. (Court Reporter: K. Metzger). Pursuant to phone conference conducted this day, the Court reopens this case for the limited purpose of considering the plaintiff's exparte motion for relief (Dkt. No. 128). This re-opening does not interfere of intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas. (Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 09/30/2020)
09/10/2020		(Court only) ***Case Reopened for the limited purpose of considering the plaintiff's exparte motion for relief <u>128 (p.2672)</u> . This re-opening does not interfere of intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas. (chorace) (Entered: 09/30/2020)
09/12/2020	<u>136</u> (p.3023)	TRANSCRIPT re: Telephone Conference held on 9/10/20 before Judge Kenneth M Hoyt. Court Reporter/Transcriber K. Metzger. Ordering Party Stephen A. Mendel Release of Transcript Restriction set for 12/11/2020., filed. (kmetzger) (Entered: 09/12/2020)
09/14/2020	<u>137</u> (p.2900)	Notice of Filing of Official Transcript as to <u>136 (p.3023)</u> Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/14/2020)
09/23/2020	<u>139</u> (p.2902)	ORDER denying <u>128 (p.2672)</u> Ex Parte MOTION for Relief from Judgment and <u>133 (p.2850)</u> Opposed MOTION to Reopen Case. Case terminated on 9/23/2020.(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 09/30/2020)
10/23/2020	<u>140</u> (p.2904)	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Candace Louise Curtis (Filing fee \$ 505, receipt number 0541-25403999), filed. (Schwager, Candice) (Entered: 10/23/2020)
10/26/2020	<u>141</u> (p.2906)	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: <u>140 (p.2904)</u> Notice of Appeal. Fee status: Paid. Reporter(s): M. Malone, filed. (dnoriega, 1) (Entered: 10/26/2020)
10/26/2020		Appeal Review Notes re: <u>140 (p.2904)</u> Notice of Appeal. Fee status: Paid. The appeal filing fee has been paid.Hearings were held in the case. DKT13 transcript order form(s) due within 14 days of the filing of the notice of appeal.Hearings were held in the case - transcripts were produced. Number of DKT-13 Forms expected: 1, filed.(dnoriega, 1) (Entered: 10/26/2020)
11/05/2020		Notice of Assignment of USCA No. 20-20566 re: <u>140 (p.2904)</u> Notice of Appeal, filed.(JenniferLongoria, 1) (Entered: 11/05/2020)
11/09/2020	<u>142</u> (p.2907)	DKT13 TRANSCRIPT ORDER REQUEST by Candace Curtis. This is to order a transcript of Rule 60 motion hearing held 9/10/2020 before the Honorable Kenneth Hoyt. Court Reporter/Transcriber: Kathy Metzger. This order form relates to the following: <u>140 (p.2904)</u> Notice of Appeal, filed.(jday, 4) (Entered: 11/10/2020)

11/30/2020		(Court only) ***(PRIVATE ENTRY) EROA requested by the 5th Circuit; due by 12/15/20 (20-20566 ABT), filed. (EdnitaPonce, 1) (Entered: 11/30/2020)
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TAB 2

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF TEXAS, HOUSTON DIVISION

Candace Louise Curtis	§	No. 4:12-cv-592
Plaintiff	§	
	§	
v	§	
	§	
Anita Kay Brunsting	§	
Amy Ruth Brunsting	§	
Defendants	§	

Notice of Appeal

Parties are hereby noticed that the above named Plaintiff, Candace Louise Curtis, will appeal to the United States Court of Appeal for the Fifth Circuit, the September 23, 2020 District Court Order [Dkt 139] denying Rule 60 Motion [Dkt 128] to vacate a remand order [Dkt 112] void as a matter of law.

Candice Schwager
Candice Lee Schwager
16807 Pinemoor Way
Houston , Texas 77058
Tel: 867-7173
candiceschwager@icloud

TAB 3

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 23rd day of September, 2020.



Kenneth M. Hoyt
United States District Judge

TAB 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF’S MOTION TO REMAND

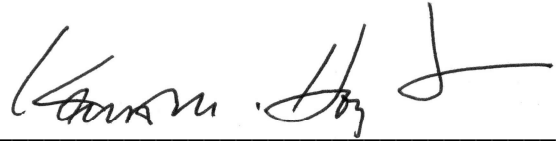
The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge

TAB 5

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing brief for the Appellant Candace Louise Curtis and the Record Excerpts have been served by the 5th Circuit electronic filing system upon STEPHEN A. MENDEL and NEAL E. SPIELMAN, counsel for Defendants on this 8th day of February 2021.

/s/ Candace Louise Curtis
Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
Plaintiff-Appellant pro se

TAB 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:12-CV-592

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.¹ At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

¹ It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.



Kenneth M. Hoyt
United States District Judge

TAB 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF’S MOTION TO REMAND

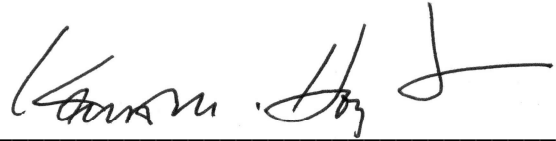
The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

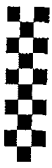
It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge

TAB 8



THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

To: Bobbie G. Bayless Fax: (713) 522-2218

Phone: _____

From: Cory S. Reed Phone: (713) 403-8213

Date: March 4, 2014 Time: _____

File No: 00520.415 User ID: REEDC

Re: Cause No. 2013-05455; Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al; In the 164th Judicial District Court of Harris County, Texas

There are 28 pages being sent, including this page.

If you are having difficulty receiving this document, please call:

Rosie Gonzalez at (713) 403-8396

Urgent For Review Please Comment Please Reply

Message: Please see attached.

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THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

Cory S. Reed
Direct Dial: (713) 403-8213
creed@thompsoncoe.com

Austin
Dallas
Houston
Los Angeles
Northern California
Saint Paul

March 4, 2014

VIA FACSIMILE

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

Re: No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In
the 164th Judicial District Court of Harris County, Texas.

Dear Ms. Bayless:

Enclosed, please find the following:

1. Defendants' First Amended Objections and Responses to Plaintiff's First Request for Production; and
2. Defendant Candace L. Kunz' First Amended Objections and Answers to Plaintiff's First Set of Interrogatories.

Sincerely,



Cory S. Reed

/rg
Enclosures

TAB 9

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5/28/2014 5:40:59 PM
Stan Stanart
County Clerk
Harris County

**Data Entry
Pick Up This Date**

CAUSE NO. 412,249-401

PROBATE COURT 4

IN RE: ESTATE OF
NELVA E. BRUNSTING,
DECEASED

§
§
§
§
§

IN THE PROBATE COURT
NUMBER FOUR (4) OF
HARRIS COUNTY, TEXAS

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. *See Ex. A, Order of Remand.*

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

06052014:0759:P0097

06052014:0759:P009B

III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/*Sain*

A limited Liability Partnership

BY: 

JASON B. OSTROM

(TBA #24027710)

jason@ostromsain.com

NICOLE K. SAIN THORNTON

(TBA #24043901)

nicole@ostromsain.com

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of My, 2014:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. George W. Vie III
1021 Main, Suite 1950
Houston, Texas 77002
713.225.0547
713.225.0844 (Facsimile)


Jason B. Ostrom

06052014:0759:P0100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

Exhibit A
RE-155

Case 4:12-cv-00592 Document 112 Filed in TXSD on 05/15/14 Page 2 of 2

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.



Kenneth M. Hoyt
United States District Judge

06052014:0759:PO101

06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF

NELVA E. BRUNSTING,

DECEASED

§
§
§
§
§

IN THE PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249-401.

SIGNED on this 3 day of June, 2014.

Christine Boush
JUDGE PRESIDING

Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2014 JUN -4 AM 10:35

06052014:0759:P0108

APPROVED AS TO FORM:

OSTROM/*Sain*

A limited Liability Partnership

BY:



JASON B. OSTROM

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

UNOFFICIAL COPY

TAB 10

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

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

CAUSE No. 412,249 - 402

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

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clemetine Buter
JUDGE PRESIDING

03092015:0815:P0002

03092015:0815:P0003

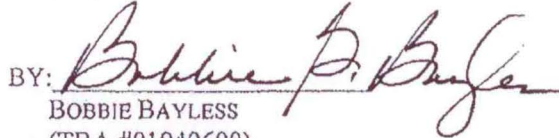
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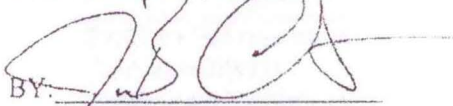
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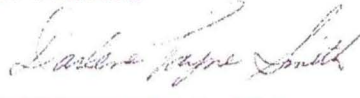


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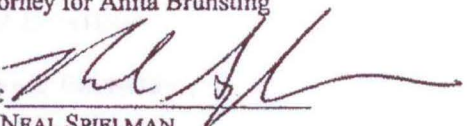
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Attorney for Amy Brunsting

TAB 11

Subject: RESPONSE FROM AN ATTORNEY
From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Thursday, December 29, 2016 6:56 AM

Dear Ms. Brunsting:

As you know, our firm represents your sister, Anita Brunsting, in her capacity as co-trustee of the trust. We are sending this response to you on the assumption that you continue to represent yourself, as we are not aware of any attorney taking over your representation since you separated from the Crain Caton law firm.

We received your request for a distribution and the request is denied. The reasons for denial include, but are not limited to, your articulated reasons are insufficient, Ms. Curtis's allegations in the probate litigation, and the estate's need to maintain liquidity for incurred debt.

We understand that you believe the probate court ordered that distributions be made for the reasons that you claimed. We are unaware of such an order. If you believe the probate court issued such a ruling, then please provide a copy of same.

Best wishes.

Very truly yours,
Stephen A. Mendel

The Mendel Law Firm, L.P.
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TAB 12

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CANDACE LOUISE CURTIS

Plaintiff,

V.

ANITA KAY BRUNSTING, AND
AMY RUTH BRUNSTING

Defendants.

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4:12-CV-00592

NOTICE OF STATE COURT PROCEEDING FILED AGAINST THESE PARTIES
PLAINTIFF AND DEFENDANT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting would advise the Court of the institution of a state court suit on April 9, 2013. This notice is provided in supplementation of the information given at a temporary restraining order hearing held on April 9, 2013.

1. At the hearing on Plaintiff's request for a temporary restraining order, Dkt. # 40, counsel for Defendants referenced the existence of a Harris County District Court lawsuit Carl Brunsting had filed against certain attorneys.

Late in the afternoon on April 9, after the hearing was completed, counsel was forwarded a copy of a new suit filed in Harris County Probate Court against Defendants Anita Kay Brunsting and Amy Ruth Brunsting (individually and as Successor Trustees of the Trust); Plaintiff Candace Curtis; and non-party Carole Brunsting. The suit seeks declaratory relief; demands a trust accounting; seeks money damages against Defendants; contains claims of negligence, tortious interference with inheritance, conspiracy, and

conversion; requests injunctive relief and a constructive trust; and requests an award of attorney's fees. A copy of the suit is attached.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court take notice of this filing.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: /s/ George W. Vie III

George W. Vie III

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State Bar No. 20579310

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Telephone: 713.225.0547

Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

/s/ George W. Vie III

George W. Vie III

TAB 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

ORDER

Before the Court is the plaintiff’s, Candace Louise Curtis, motion for an order to show cause and application for contempt against the defendants, Anita Kay Brunsting and Amy Ruth Brunsting, trustee and co-trustee of the Brunsting Family Living Trust. In principle, the plaintiff seeks to examine and copy the “original” signatures on the Trust documents and to remove the defendants in their capacities as a result of their failure to comply with the plaintiff’s discovery requests.

The Court is satisfied that the injunction entered in this case preserves the assets of the Trust Estate. The Court is further satisfied that copies of all documents requested by the plaintiff have been produced. However, the plaintiff has failed to inspect the original documents that the defendants have made available to the plaintiff.

Finally, the Court is of the view that the plaintiff’s failure to employ counsel hinders the necessary discourse between the plaintiff and the defendants and further prevents the parties from fulfilling their responsibilities to the Court, *i.e.*, to manage and process all pretrial matters necessary to a resolution of this case. Therefore, the Court Directs that the plaintiff employ

counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. The plaintiff's motion is Denied without prejudice.

It is so Ordered.

SIGNED on this 3rd day of October, 2013.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge

TAB 14





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STAN STANART
Harris County Clerk

[Courts](#) [Property Records](#) [Personal Records](#) [Other](#)

Probate - November 1837 to present

Case Number: 412249-402	<input type="button" value="Search"/>	 <p>Images available from Jan. 1, 2008 to Present</p> <p>26 Event Record(s) Found.</p> <p>Probate - reflect(s) filings accepted through 2016-09-09</p>
<input checked="" type="radio"/> Party <input type="radio"/> Attorney	<input type="button" value="Search"/>	
Name Last Name First - No Punctuation		
File Date (From): MM/DD/YYYY  (To): MM/DD/YYYY 		

Case	Court	File Date	Commenced By	Status	Nature	Style	Location	View All
412249	4	04/02/2012	Original Will	Closed Case	Deposit of Will with NO Application	NELVA E BRUNSTING		Parties
412249-401	4	04/09/2013	Application	OPEN	Declaratory Judgement (Indep.)	NELVA E. BRUNSTING, DECEASED		Parties
412249-402	4	02/09/2015	Petition	OPEN	Motion Pertaining to Lawsuits			Parties

RE-48

20-20566.2869

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/09/2015	Case Initiated - Petition		0	
412249-402	02/09/2015	Motion Pertaining to Lawsuits Only (Indep.)	NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION	601	PBT-2015-47608
412249-402	02/09/2015	Receipts	RECEIPT #1166739 CHARGED \$182.00 FOR ENVELOPE #4075218	1	PBT-2015-47611
412249-402	02/09/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTERFILED PREVIOUSLY ON 2/6/15	51	PBT-2015-47630
412249-402	02/09/2015	Receipts	RECEIPT# 1166586 CHARGED \$27.00 FOR ENVELOPE NUMBER 40506979	1	PBT-2015-47634
412249-402	02/10/2015	Amended	NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION	12	PBT-2015-47716
412249-402	02/10/2015	ELECTRONIC FILING FEE		0	
412249-402	02/11/2015	ELECTRONIC FILING FEE		0	
412249-402	02/11/2015	Notice of Hearing		2	PBT-2015-48491
412249-402	02/11/2015	Receipt# 1167156 generated for the amount of \$ 2.00		0	
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Demand for a Jury		0	
412249-402	02/12/2015	Amended	PLAINTIFF'S SECOND AMENDED PETITION	8	PBT-2015-49977
412249-402	02/12/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER	51	PBT-2015-50259

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Receipt# 1167371	generated for the amount of \$ 2.00	0	
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Application for Continuance		5	PBT-2015-50464
412249-402	02/13/2015	Receipt# 1167788	generated for the amount of \$ 4.00	0	
412249-402	02/13/2015	Receipt# 1167789	generated for the amount of \$ 25.00	0	
412249-402	02/13/2015	Receipt# 1167800	generated for the amount of \$ 24.00	0	
412249-402	02/13/2015	ELECTRONIC FILING FEE		0	
412249-402	02/13/2015	Receipt# 1168038	generated for the amount of \$ 2.00	0	
412249-402	02/17/2015	ELECTRONIC FILING FEE		0	

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/17/2015	Misc. Notice	CHANGE OF NAME AND ADDRESS	2	PBT-2015-56703
412249-402	02/18/2015	Receipt# 1168909 generated for the amount of \$ 2.00		0	

TAB 15

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS §
VS. § Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, ET, AL. §

ORDER DENYING PLAINTIFF’S EX PARTE MOTION FOR RELIEF

After considering Plaintiff’s Ex Parte Motion for Relief and Co-Trustees’ Response to Ex Parte Motion for Relief and taking judicial notice of its file in this cause the Court has determined that Plaintiff’s Ex Parte Motion for Relief lacks merit, while the arguments and analysis presented in Co-Trustees’ Response to Ex Parte Motion for Relief are reasonably made, accurate, persuasive, and meritorious. Accordingly, the Court FINDS and ORDERS that:

1. Plaintiff’s Ex Parte Motion for Relief was not timely filed because:
 - a. Plaintiff had knowledge of (or a means to discover) the complained of activities in 2014, as those activities were occurring;
 - b. Plaintiff had knowledge of (or a means to discover) the complained of activities throughout 2014 and 2015, while represented by counsel; and/or
 - c. Plaintiff had knowledge of the complained of activities in 2016;

and did not pursue her claims for Rule 60 relief within a reasonable time.
2. 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 via Civil Action No. 4:16-cv-01969 and determined to be frivolous, “fantastical” and “often nonsensical.”
3. Plaintiff’s Ex Parte Motion for Relief is presented as a means of “forum shopping” her jurisdictional arguments, as previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401.

4. The transfer/remand of Plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to 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 via other means, methods, procedures and mechanisms.
5. This Court ceded jurisdiction of 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, via Doc. 112.
6. 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 of the Preliminary Injunction, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, 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.
7. Plaintiff is specifically instructed not to file any further or additional pleadings, motions, affidavits, orders or other documents into this closed, terminated matter, or Plaintiff shall be subject to sanctions for doing so.
8. Plaintiff's Ex Parte Motion for Relief is, in all ways and manners and to the fullest extent allowed by law, DENIED.

SIGNED on the ____ day of _____ 2020.

PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED:

GRIFFIN & MATTHEWS

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THE MENDEL LAW FIRM, L.P.

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ATTORNEYS FOR ANITA BRUNSTING

TAB 16

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2013

Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in *Marshall v. Marshall*.¹ The Plaintiff contends that, under *Marshall*, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

¹ 547 U.S. 293 (2006).

I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust (“the Trust”) for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively “the Brunstings’ Wills”) appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.² Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis (“Curtis”) filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively “the Defendants”) based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against “wasting the estate,” and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis’s application for a temporary restraining order and injunction because the Defendants had not

² The signed copies of the Brunstings’ Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

been served with process. In the order, the district court judge noted that it “appears that the court lacks subject matter jurisdiction over the claim(s) asserted.” On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants’ contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a *sua sponte* order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

II.

This Court reviews *de novo* a district court’s dismissal for lack of subject-matter jurisdiction.³

III.

Although a federal court “has no jurisdiction to probate a will or administer an estate,”⁴ in *Markham v. Allen*, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

[F]ederal courts of equity have jurisdiction to entertain suits ‘in favor of creditors, legatees and heris’ and other claimants against a decedent’s estate ‘to establish their claims’ so long as the federal court does not interfere with the probate proceedings or assume

³ *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 170 (5th Cir. 2009).

⁴ *Markham v. Allen*, 326 U.S. 490, 494 (1946).

general jurisdiction over the probate or control of the property in the custody of the state court.

Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.⁵

Sixty years later, in *Marshall v. Marshall*, the Supreme Court expressed concern with lower courts' interpretation of *Markham*, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."⁶ Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,⁷ explaining:

[W]e comprehend the 'interference' language in *Markham* as essentially a reiteration of the guiding principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.⁸

The *Marshall* Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

⁵ *Id.* (internal citations omitted).

⁶ 547 U.S. at 311.

⁷ *Id.* at 310.

⁸ *Id.* at 311–12.

seeks an *in personam* judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a *res* in custody of a state court.”⁹ After *Marshall*, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) “seek[ing] to reach a *res* in custody of a state court” by “endeavoring to dispose of [such] property.”¹⁰

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, *Marshall* requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff’s claims would require the federal court to assume *in rem* jurisdiction over that property. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise *in rem* jurisdiction over a *res* in the custody of another court. Both of the Brunstings’ Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.¹¹ However, nothing suggests that the Texas probate court currently has custody or *in rem* jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

⁹ *Id.* at 312 (internal citations omitted).

¹⁰ *Id.* at 312–13.

¹¹ At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

therefore are not part of the decedent's estate.¹² In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.¹³ Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

¹² See 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust."); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . .").

¹³ Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.