**[Ex 2-3k] 2006-10-11 791072b October 11 2006 Texas Senate Hearing on Jurisprudence**

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I heard testimony earlier this morning, and again, I'm not an attorney, that with respect to judicial immunity for court appointees, there may be a difference of opinion in the appeals courts out of Harris County and Bexar County. With respect to answering that question, I think that's a critical question as a matter of public policy. In one case, the Conte case, the trustee who managed to take that trust from a very solvent probably $7 or $8 million trust with $3 million in the bank and $500,000 a year income down to no money in the bank, no income, and probably about only two-thirds of the value of the estate, I think somebody should have the right to go back and challenge the $1.5 million that that person received as they were allegedly being a fiduciary.

I don't think that there should be any immunity granted, but that's a public policy question. I would urge you not to. Allow them to go through the judicial system, same as everybody else has to, and determine the question of whether or not they exercise their fiduciary duties and responsibilities consistent with the best interest, consistent with how a prudent person would manage their own affairs.

I don't think prudent people sue themselves too often. Maybe they do. And consistent with the best interest of the beneficiaries, and let that be challenged in court.

That's my recommendation to the committee, Mr. Chairman, on judicial immunity. Throughout my investigation of probate court over the years, I heard time and time again, and it's not written anyplace, it's simply an attitude, that when somebody has a contested case brought to the probate court for help, and I think that's the intent of the legislature, is that the probate court is to help the families resolve problems. But when they do, the attitude I've been given is that the property, the estate, the assets then belong solely to the court, not until the court makes a final distribution of it do they belong to anybody else.

I think, again, as a matter of public policy, Mr. Chairman, it doesn't belong to the court. It belongs to the heirs, whether or not they're known. It belongs to the beneficiaries.

It belongs to the ward, and it's only under the care and safekeeping of the court until it is distributed. Not the property of theirs to do with as they want. That's an attitude I get.

And Mr. Chairman, I agree that we have a very good probate law from everything I see. I'm not here to propose big changes in the probate law. I think it's the application of it, which begins back with behavior by the participants in it.

One thing I would . . . Well, see, that's the challenge and difficulty we face because I would like to correct some of what I perceive to be abuses of the system, and I'm not entirely sure that we're going to be able to do as much as I would like to do legislatively. It's sort of like a lot of the societal problems we face in public education. I mean, there are some things that are beyond our ability to change.

Some of these things that are societal problems really begin with the family, and we can't pass enough laws to correct those. But whatever we can do, I, for one, want to do. So I appreciate the recommendations you've made thus far.

All right, Mr. Chairman, just to sort of finish up, there's one area that's always bothered me in investigating these, and that's the sale of property out of the probate estates. And when it is sold to a partnership or a trust of some sort, I believe that since these are being sold out of the court on behalf of an estate, a beneficiary, a trustee, and the heir award, that as a matter of public policy, you may want to require full disclosure of all financially interested people within that organization that's buying it. I think it's a matter of sunshine, it's a matter of integrity, to give the families confidence that their properties aren't being sold below market value to somebody who's turning around and flipping them for major profits.

And again, it's just simply a matter of full disclosure. I think that based on the four and a half years that I spent with Judicial Watch here in Texas talking to families all across the state, mothers who spend month after month after month trying to get a distribution out of a trust fund for their incapacitated child, while that very same attorney handling that account gets paid from the court in 30 days upon application, I've heard all of the frustrations, I've heard all the aggravations, and I believe that there's some public exposure needed. I believe there's oversight needed, simply the same as this legislative body provides oversight and the executive branches should do it on the judicial branch.

I believe that this is not a Harris County problem, this is not a Judge Wood problem, this is not a statutory probate court problem, this is a Texas problem. From the Valley to Amarillo and from El Paso to Texarkana, the problems are the same, whether it's the $120,000 house that's the only part of an estate, or if it's the multimillion or $100 million estates that are being litigated in the courts, the end results to the families are, and my advice to them, is if you have to go to probate court, hold your wallet because it's going out the door. Don't go to probate court under any condition in the state of Texas if you want to see your finances come out in a contested matter.

I believe, Mr. Chairman, that in some instances, there, in my opinion, there's ongoing criminal enterprises here. I would love to see the legislature, in the next session, convene a special investigative body to look into, not just the four or five that came up here today, but the hundreds of cases that would like to tell you about what happened to them. Absent that, Mr. Chairman, or in addition to that, I would think that it would be appropriate public policy for you to look at the creation, not of an ombudsman, but of an inspector general in the judicial branch.

In the last session of the United States Congress, in both the House and the Senate, there was a bill introduced to create such a position as an inspector general, where some of these questions can be aired out with the inspector general. Now, what's the distinction between an inspector general versus a judicial conduct commission? I filed several, if not many, complaints with the Judicial Conduct Commission over the last four and a half years, and a consistent answer from them is that if the event occurred within the four walls of a courtroom . . . if it occurred within the four walls of a courtroom, it's a matter subject to appeal and not a matter of conduct. The Judicial Conduct Commission looks at . . . That's not accurate.

It may not be accurate, Mr. Chairman, but that is certainly what I've been told. We've had judges removed from office for conduct in the courthouses where they conduct business. I think of one in South Texas in particular, improper relationships with employees and litigants in his court.

I'm sorry. I wasn't . . . And he's no longer a judge. I'm familiar with the case.

I wasn't clear, Mr. Chairman. If it happens within the four walls of the courtroom where a trial is going on, like in the case of Mr. Alpert, where things were said to him by a judge, it is not a subject matter for the Judicial Conduct Commission. It's a subject matter for the appellate process.

It could be reviewed on appeal, but not through the Judicial Conduct Commission. But things that happen outside of a trial are behavioral items which the Judicial Conduct Commission, in its infinite wisdom, will take a look at and bury. And that, Mr. Chairman, I believe, are all of the recommendations that I have.

I believe it is truly a cottage industry that has sprung up around this specialized court. I think there are some very good judges, very good attorneys, very good litigants throughout the process, and I think there are some very bad ones. And the job is to ferret them out.

It's more a matter of behavior than it is a matter of legislation, unfortunately. I appreciate your testimony and your suggestions, and we've taken note of them. I have a very competent lawyer back here who's not going to be with us that much longer, but she's taking great notes, and we'll be working on these suggestions.

May I inquire, is that Mrs. Calcote? It is Mrs. Calcote, yes. I tell you, there's a whole community out here who would be very, very sad to see Mrs. Calcote leave this position. Well, Mrs. Calcote's been with me for the better part of a decade, and she has a little girl that needs her attention at home more, she claims, than her professional services to the people of Texas.

So we're all going to miss her. On behalf of many of the families throughout the state of Texas who are afraid to come to a hearing like this for fear of retribution in their cases, I'd like to thank not only the chairman and the members of the committee and the staff for this, but especially Mrs. Calcote for all she's done to allow these people to have a voice. Thank you, Mr. Chairman.

You bet. Thank you, sir. Chairman.

Okay, we understand Mr. Ragland is here but doesn't wish to testify. Is that correct? All right. Chair calls Van Brookshire.

You'd identify yourself and who you represent and proceed, please, sir. Yes, sir. My name is Van Brookshire.

I represent myself. I, too, have a story about probate court, and it happens to be in Harris County, probate court number one, and it is still in process. I have been given a crash course on probate court and what it means in Harris County the last five months because of this case that involves my mom.

I was oblivious to the whole structure of probate court and what it has, what it can do to you and the powers that these judges seem to have. There are a lot of reasons why these cases are here today and what we're hearing. You know, there's conflict in families.

There's control. There's revenge. Whatever the reason, we end up in probate court.

And the person in my case is my mom, who is very, very dear to me, and so I'm willing to stand here today and face possible retribution from a judge who has verbally threatened me on three separate occasions to drop my contest in this case because I believe that we all in this room need to stand up for what's right. My story is too long to tell because we've heard it before. There's abuses of the system.

These people in these specialty courts, they truly have a probate business. They are running it for profit, and it profits their small group, their small circle. When I was drawn into this, I went to my family attorney, a friend for over 35 years, and he told me there's no way to win.

There's not enough money in the world. You cannot go to Harris County and survive this. Kiss it all goodbye and lick your wounds and walk away.

I went to five additional attorneys, some of them within this circle, this small club. They either wanted too much money or they didn't have time or they didn't want to go into that particular judge's court for whatever reason. I learned that this circle of friends has a name in Harris County.

It's called the Tomb Raiders Club, and they pride themselves on making a living out of this particular industry that they have created. They have a list of appointees that we've heard all these people talk about. You listen to these names, you hear the same names over and over again.

You start researching this court, which I have done, thanks to the internet, you see it's the same people that get the good, nice estates and get to be appointed on those estates. I could continue on and complain about what has happened to my family, and it's not going to accomplish anything. You gentlemen are charged with something this year that I don't think can be done in a year.

You need to change this. You need to put some teeth in it. I have three recommendations for a cure, and my recommendations may seem extreme, but we have a situation out there, sounds like all over the state, that is extreme.

Now, it's only affecting a small group of people, as far as out of the whole population of this state. There are very few people being drawn into this and being victimized by it, but a way to stop it is to take away unlimited access to money and these courts' abilities to seize assets. Stop them from spending the victim or the marks money.

I don't know how to do that. I don't know how to change the code to stop that, but if you stop that, you take away the reason why this is happening, and that's this dollar bill right here. The second thing that needs to happen that can also do this is to eliminate these specialty courts.

Do away with this circle of friends, these little kingdoms. Put everybody on an equal playing field, back in district court or county courts. Don't give these guys their own little ballpark to play in, because they will change the rules to meet their needs.

The third thing, we've heard about Judicial Ethics Commission. Give these men some teeth. Give this commission some teeth to go after these judges, even if they are not doing something improper, which many of them may not be, but they sure look like they are, and the vision from the outside is that there is some kind of impropriety going on.

I want to thank you gentlemen for spending the time and staying here this afternoon, and I hope that you have good luck in your endeavor. Thank you very much. Appreciate it, Mr. Brookshire.

Thank you for being here. Chair calls Joseph Conte. Hello, Mr. Chairman.

I appreciate the Senate giving us an opportunity to speak here today. I'll try to be brief and address some of the issues that you requested in regard to proposed legislation. I'm not going to repeat a lot of things that my sister said, and Mr. Verney covered a majority of the operations we have in Houston, but I'd like to give a brief background on my father and then go into proposed changes I recommend.

My father was a Chevrolet dealer in Houston for over 20 years. We're the second largest Chevrolet dealership in the United States. He invested a lot of his income into commercial real estate property in Houston and New Orleans, and in 1972, we opened up a Toyota dealership in New Orleans where he was from originally.

Our background is with Chevrolet Motor Division, General Motors, Toyota, and our own commercial real estate developments that we purchased and executed long-term leases with. Two of the properties involved in Houston were with Harris County. We had our building that my father owned, which was into the trust that he established, on Old Spanish Trail and Greenbrier, which was leased to the Justice of the Peace and the Mosquito Control Laboratory.

Also, my father bought the Jacoby Pearson Ford dealership downtown Houston in the late 70s, or sometime during the 70s. And in 1982, to diversify his assets to his family, he had established a corporation in 1969 for my sister and myself. I borrowed a million dollars from the corporation and purchased a property on 1404 Leland downtown.

And that was a full square block, which the dealership facility was located for the Ford dealership. It has about 45,000 square feet. That property we had leased from 1993 to 2003 with the Harris County Probation Department and Vehicle Maintenance.

Approximately in 1993, my father passed away. And before he died, he had established an irrevocable trust that upon his death becomes irrevocable. He had a will, and everything was established, where upon his death, my sister, my mother, and myself would be co-trustees with unanimous consent to run the trust.

In 1998, we appointed Paula Miller the recommendation of my attorney to do an accounting. And her term was to be two six-month terms to do an accounting for the trust. And my sister and I appointed her.

My mother at that time was incapacitated and was not involved in the co-trustee capacity. Shortly after that appointment, I provided Ms. Miller, Paula Miller, who was the temporary trustee reappointed, and Judge Austin's court, Probate Court One, all the information that my father and I had been dealing with before his death, things that I've been dealing with to manage the operations for our commercial real estate developments and other actions involving our corporation. And I went over everything with her in detail.

I provided her over 20,000 documents to bring her up to speed on everything it's handling, to look at the overall picture financially of our operations. Within approximately a year after that, I started getting contacts by her in regarding the 1646 Old Spanish Trail building that we had, I mentioned that Old Spanish Trail in Greenbar, which is in the Houston Medical Center. We had, my father owned that property for over 20 years, and it was leased to Harris County for 20 years, generating approximately $350,000 a year or 30,000 a month rent from the county lease.

Shortly after that, I received notice that Ms. Miller wanted to sell the property because the lease had expired in 1999 with the county. And I told her, you know, we're not selling the property. My sister agreed, and then I told her we're gonna have to release the property.

She started telling me where we're gonna sell it, that the building is condemned. It's not habitable, and that we're just gonna go and sell it, and I said, you know, we're not authorizing you to do so. So without my authorization or approval, she instituted proceedings to sell the property and not release it for lease.

And again, these properties are unencumbered. They've been in our property for many years, and when Ms. Miller was appointed, we had approximately two and a half million cash in the bank in U.S. Treasury bond accounts with Nations Bank, and we had approximately half a million a year income, 30,000 a month coming in on this building with the county. And also we had the interest income from the two and a half million in the bank.

There was absolutely no debt in the corporation, I mean, the trust, and there's absolutely no reason to this. But without my understanding, she had billed, you know, approximately 20,000 a month. And I filed a notice in the court, and also Ms. Miller and all the parties involved, that I'm not authorizing any of their actions and I want them to cease and desist.

And they'd ignored my notice to the court, filed and stamped, and they proceeded to sell the property for approximately $2 million. Based on an income approach alone with approximately 400,000 a year income coming in, the property's worth about $4 million. It's in the Houston Medical Center right next to a $600 million development expansion, and the property was sold for $2 million, approximately.

To whom did they sell the property? Well, this is interesting. The original notice of sale was to, I believe it was called Medical Center Real Estate, and which is really bizarre to me, but it was signed by Bob Randolph's President Gibraltar Financial Group. And they mentioned they were the ones who proposed the offer to buy it.

The day before, shortly before the sale, it appears that the property was not Medical Center Real Estate and Gibraltar Financial, but the women's hospital, which was next door to the property. So again, without my authorization, the property was sold, $2 million, I think it was sold for approximately $2,246,000, but after all the attorney's fees and real estate commissions, it was $2 million left over. This not only cost us the approximately $2 million equity in the property, but we no longer enjoyed $30,000 a month that we've been receiving for over 20 years, and this property was unencumbered.

Then after this, I received a notice that Ms. Miller says that the Fortuna-Fort Leland building, which I had signed a promissory note, security agreement due to trust with my father, buying it for the corporation, County Investments, for $1 million in 1982. She stated that there was a mention in the tax return that that property was the trust property, not County Investments, which purchased it in 1982. I told her that my dad had set up a trust, and during the trust, it was in the asset of the trust, but in 1982, he sold it to County Investments.

I provided there, she had access to the due to trust security agreement, everything filed with the court, the clerk's office, showing that County Investments owned the property. I get another letter stating that the trust owns the property. Then I wrote her a letter and sent it to my sister's attorney, outlining the history of the trust.

It was in the trust. It was sold to County Investments. $1 million was paid, and then she keeps reiterating that the property is a trust property after she has copies of the due to trust security agreement.

Then I receive a letter where she acknowledges that the last chain of title is in the County Investments, but that we want you to sign a due to trust and security agreement, transferring the property to the trust to clear up any title discrepancy. I refuse to do so. Then she notifies me that Harris County, which was a tenant in the property that we had a lease till 2003, and this was approximately 2000, and said that they had left the building and they're no longer a tenant.

I told her we have a lease with the county. We'd like to look into honoring that. In the meantime, I contacted Grubbin Ellis and Cushman Wakefield, two of the major commercial real estate developers in the United States, to look at this for me.

I got a letter from both of them stating that they could list it for lease for a dollar square foot, triple net as is, with some minor landscaping modifications to the building, which would generate about $40,000 a month. And this was in 1999, 2000. Ms. Miller attempted to tell me that they're not going to honor that.

They want to sell the property. And I get a letter that states that we got a buyer for the property for $1,400,000. This property is one entire square block for Inclair Unencumbered, except we had a million dollar loan to the trust, which the trust had bought.

The trust, the note was approximately $10,000 a month, and the lease from the county, which was $16,000 a month, was more enough to pay $10,000 a month. She interfered with my attempts to lease the property. I could not lease the property.

And they attempted to state, now we're in default of the lease. I mean, the note that we're going to foreclose on the property. And we're going to allow this person to bid at the foreclosure sale.

I provide Judge Austin, the deed of trust, security agreement, the letters from Ms. Miller, on one hand, billing large amounts of money, stating the trust owns it. Then a letter from her, billing lots of money, stating trust doesn't own it, county investments owns it. And the fact that she wants to sell it to a third party, and the sole reason in one of her notices is to pay the fees to administer the trust.

So basically, based on my latest report here, I just updated from the probate court records and two dockets involved. As of today, approximately $2,798,000 in fees have been paid to Paula Miller and her associates and third parties involving in this court. Paula Miller alone received $1,385,000.

The judge ignored this information. And I felt that he had some bias and prejudice in regard to this matter. And this went on for a few years.

Again, we objected to the sale of this Fortuna Fort Leland property. My sister joined me with that. And the judge backed off in any motion to sell the property at that time.

Then this kept going on and on, about three attempts that were pursued by her to sell the property to one person, then another, then another. And her actions continued with the judge's actions by ignoring the truth and the facts and the law in this matter. And the fact that we entrusted them to manage our stuff a short period of time to do an accounting, I looked into the fact that there's some kind of conflict of interest here.

I checked the Beverly Kaufman has a search engine on her clerk's site, which Beverly Kaufman is involved with the clerk's office that oversees the probate courts in Harris County. I checked the probate dockets for conflict of interest, real property sales, other links in the search engine. And I couldn't find anything, but under the section called miscellaneous personal records, I clicked on there.

I typed in Paula Miller, which was the trustee. And it popped up, it said Paula Miller, and it said Judge Russell Austin, which it happens to be the judge of probate one court. I looked at it and it said campaign finance election report from 2001 to 2005.

I looked at it and I went down to the clerk's office. I got these, it was just a notice of the fact that there was a campaign election report filed regarding Paula Miller and Judge Austin, but I pulled the records. And since 2001, Paula Miller has been the judge's campaign election finance treasurer.

The documents signed by Judge Austin and Paula Miller, which in those documents state, Paula Miller is the treasurer of this judge's election campaign. I provided that to my sister. And at the meantime, I was talking to Russell Verney, with Judicial Watch about this, and she provided it to him.

And I believe Mr. Verney contacted Channel 13 News. Channel 13 News conducted an investigative report on this and appeared at the courthouse. And at one of the proceedings, asked Paula Miller in the hallway, we'd appreciate if you could tell us about your relationship with Judge Austin.

And Paula Miller says, I don't have a relationship with Judge Austin. And Channel 13 News put on there, they superimposed the campaign finance reports showing her as treasurer, the judge's campaign with his signature, her signature, and her name on there over 2001 to 2005. Shortly after that, Judge Austin discharges her as trustee, temporary trustee.

Then my sister informs me that the judge has taken action to strike the provision that my sister and I, as beneficiaries, can't appoint a trustee, and modified an irrevocable trust that my dad had established before his death. And that is my understanding, currently under appeal. In the interim, I appointed, my sister and I agreed, and I appointed her under a trust provision.

For her to be the trustee. And that is still pending in the court right now. But again, when we appointed Ms. Miller, temporary trustee for two six-month periods, I also went back to the court record and tried to figure out how this, what was going on.

Over and above the conflict of interest with the judge and this woman as a treasurer, my sister and I signed a agreed order appointing Ms. Miller to two six-month terms as the temporary trustee. In there it says, after the two six-month terms are ended, that my sister and I, and, are, to revert to back to us as co-trustees as the trust agreement, specifically. Judge Austin lined through that provision shortly after it appears I signed it.

And said, subject to further orders of his court. So basically, Judge Austin struck the fact, under that agreed order, that we are the two co-trustees that appointed Ms. Miller under the trust agreement. And after we appointed her, that provision was struck out of the agreed order that we both signed, and all we went to the court was to file this thing.

There was no proceeding. The judge had no ruling on this thing. It was an agreed order.

Both parties, my sister and I, signed to appoint this lady to do an accounting. And then the fact that the judge has stricken the provision where my sister and I as beneficiaries can appoint a trustee, he has stricken that. And he did that and that is under appeal.

**This file is longer than 30 minutes.**

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