

REPORTER'S RECORD

VOLUME 2 OF 3

TRIAL COURT CAUSE NO. 41211-01-000001 FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS

APPELLATE COURT NO. 01-23-525-2023-07 5/25/2023 4:07:40 PM

DEBORAH M. YOUNG
Clerk of The Court

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

* * * * *
MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ
& MOTION TO EXECUTE EASEMENT AND SETTLEMENT
* * * * *

On the 11th day of February, 2022, the following
proceedings came to be heard in the above-entitled and
numbered cause before the Honorable James Horwitz,
Judge of Probate Court No. 4, held in Houston, Harris
County, Texas:

Proceedings reported by Machine Shorthand

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1 (Motion to Sever & Status Conference Regarding MSJ
& Motion to Execute Easement and Settlement)

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1 February 11, 2022

2 (WHEREUPON the following proceedings
3 were conducted via Zoom and YouTube:)

4 PROCEEDINGS:

5 THE COURT: This is our case, it's the
6 412249 the 401, Brunsting estate.

7 My notes reflect that we have a motion to
8 sever and a status conference regarding an MSJ and a
9 motion to execute easement and settlement.

10 First, I want to make sure we're all in
11 agreement that's what we're talking about today.

12 MR. MENDEL: Yes, sir, for Anita
13 Brunsting.

14 THE COURT: I'm not hearing anybody
15 disagree.

16 All right. Let's start by having each
17 attorney make an appearance on the record, and tell the
18 Court who you represent.

19 MS. BAYLESS: Bobbie Bayless on behalf of
20 Carl Brunsting.

21 MR. MENDEL: Steve Mendel on behalf of
22 Anita Brunsting.

23 MR. SPIELMAN: Neal Spielman on behalf of
24 Amy Brunsting.

25 MS. CAROLE BRUNSTING: Carole Brunsting,

1 pro se.

2 MS. SCHWAGER: Candice Schwager on behalf
3 of Candace Curtis, Your Honor

4 MR. REED: This is Cory Reed on behalf of
5 Candace Kunz-Freed.

6 THE COURT: Okay, Mr. Spielman, I heard
7 you barely; if you can turn your volume up and get a
8 little closer.

9 MR. SPIELMAN: Is that better?

10 THE COURT: That's a lot better. All
11 right. Who spoke after Mr. Spielman?

12 MS. CAROLE BRUNSTING: I think I did.
13 Carole Brunsting, pro se.

14 THE COURT: Okay, Carole. Got it.

15 Ms. Schwager and Mr. Reed, I think are the
16 only two remaining to speak.

17 MS. SCHWAGER: Oh. Candice Schwager for
18 Candace Curtis, Your Honor.

19 THE COURT: Thank you.

20 MR. REED: And Cory Reed on behalf of Ms.
21 Kunz Freed.

22 THE COURT: Okay. The first thing I want
23 to take up is this motion to execute easement and
24 settlement.

25 The Co-Trustees have filed their motion

1 for authority to execute an easement and Settlement
2 Agreement. Would either Mr. Spielman or Mr. Mendel like
3 to speak on this topic, briefly?

4 MOTION TO EXECUTE EASEMENT AND SETTLEMENT

5 ARGUMENT BY MR. MENDEL:

6 MR. MENDEL: Yes, Your Honor.

7 There's a -- part of the Trust asset is
8 145 acres, plus-or-minus, up in, I think, Sioux County,
9 Iowa. The Local Water Authority wants an easement
10 across a whole bunch of contiguous tracks. This is one
11 of those.

12 I have emails from Ms. Bayless and from
13 Carole Brunsting and from Candice Schwager that indicate
14 no opposition; so, I'm pleased to say that we've
15 resolved that particular issue. But the bottom line -
16 for the Court's benefit - is that it's not a lot of
17 money, but it's about \$17,000-and-change that the Local
18 Water Authority is going to be compensating the Trust.

19 THE COURT: All right. And if I
20 understand it right - some portion of that is going to
21 go to a tenant-farmer?

22 MR. MENDEL: Well, it might. That's a
23 discussion to have with the tenant-farmer, but we've
24 received money - as part of the negotiation - from the
25 Local Water Authority to -- they're of the opinion

1 there's no material impact to farmers. Naturally,
2 farmers would disagree, but we may need to share a
3 little bit of that money with the farmer. That amount
4 is to be negotiated, but we need to be resolved with the
5 Local Water Authority.

6 THE COURT: All right. And if I
7 understand it right as what Mr. Mendel has said -
8 counsel for the other parties aren't in disagreement as
9 to at least initially signing the Settlement Agreement
10 with the Water Board; is that a correct statement, Ms.
11 Bayless?

12 MS. BAYLESS: Yes, Your Honor.

13 THE COURT: Ms. Schwager?

14 MS. SCHWAGER: Yes, Your Honor.

15 THE COURT: And, Ms. Brunsting? Carole?

16 MS. CAROLE BRUNSTING: Sorry, I was on
17 mute. Yes, that's correct.

18 THE COURT: Okay. So, the Court has a
19 little bit of a concern, given that the proposed
20 order...

21 (Judge's computer froze)

22 THE COURT REPORTER: Judge, you're frozen.

23 THE COURT: Gives the Trustees right to
24 make --

25 JUDGE COMSTOCK: Judge, can you hear me?

1 THE COURT: Did I freeze up?

2 JUDGE COMSTOCK: You did. Can you sort
3 of -- right as you started, I think it was a ruling.
4 I'm not sure.

5 MOTION TO EXECUTE EASEMENT AND SETTLEMENT

6 THE COURT'S RULING:

7 THE COURT: All right. My concern is the
8 language in the proposed order that gives the Trustees
9 the right to unilaterally make a settlement with the
10 tenant-farmer for some monies. Given the litigious
11 nature of this whole situation with the family, I'm a
12 little bit concerned that I would just be creating
13 another problem with that. So, I'm willing to agree to
14 the settlement for the Trust to receive the - I think
15 you said - some \$17,000.

16 MR. MENDEL: Yes, sir.

17 THE COURT: But I want to hear back from
18 the parties.

19 And Mr. Mendel, if you're the one leading
20 the charge - on what kind of money is going to satisfy
21 the tenant-farmer for his crop damage.

22 MR. MENDEL: Well, it's our position - and
23 we haven't negotiated this out - but based on the due
24 diligence that we have performed, we think that number
25 might be in the range of maybe 250 to maybe 500 dollars.

1 We do not see the farmer as having any rights whatsoever
2 to a material significant portion of this money.

3 THE COURT: All right. Let me ask this
4 question of Ms. Bayless, Ms. Schwager, Ms. Brunsting.
5 If I was to delineate -- and Mr. Reed, sorry and Mr.
6 Spielman.

7 If I was to delineate into this proposed
8 order that the Trustees can tender a portion of the
9 settlement of the proceeds not to exceed a thousand
10 dollars; would that be acceptable to all of the parties?

11 MS. BAYLESS: Yes, Your Honor.

12 MS. SCHWAGER: Yes.

13 THE COURT: Okay. So, why don't I do
14 that. And, Judge Comstock... Are you with me, Judge
15 Comstock?

16 JUDGE COMSTOCK: I am; yes, Judge.

17 THE COURT: Can you delineate that phrase
18 in there?

19 JUDGE COMSTOCK: Yes, sir.

20 THE COURT: To tender a portion of the
21 settlement proceeds not to exceed a thousand dollars.

22 JUDGE COMSTOCK: Got it.

23 THE COURT: To the existing farming
24 tenant. So, we put that issue to bed, okay.

25 MR. SPIELMAN: Judge, I have one comment.

1 THE COURT: Sure, go ahead, sir.

2 MR. SPIELMAN: To perhaps avoid anyone in
3 the future misconstruing what you just said, like maybe
4 not to exceed \$1,000 without prior court, without prior
5 court approval - that way nobody thinks that you've
6 ruled that it can't be a thousand and one dollars;
7 you're just giving the Trustees authority up to a
8 thousand dollars.

9 THE COURT: That's fine. If that will
10 make additional comfort, I'm okay with that. So, can
11 you add that language, Judge Comstock?

12 JUDGE COMSTOCK: I will.

13 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

14 THE COURT: All right. So, we're taking
15 care of that.

16 All right. The next [technical
17 interruption] we have after this before me right now is
18 the -- a motion to sever. Now, let me make sure I'm
19 reading this correctly.

20 And then this motion to sever is -- is it
21 to be understood in conjunction with the Rule 11
22 Agreement that was filed on December the 6th?

23 MR. MENDEL: Yes, Your Honor.

24 THE COURT: Okay. Now, I've ruled on the
25 July -- I think the July 9th, 2015 motion for partial

1 summary judgment has been ruled on, has it not?

2 MR. MENDEL: You ruled on part of it. I'm
3 sorry, Ms. Bayless - that's your motion; I apologize.

4 MS. BAYLESS: That's all right. But, you
5 said what I was going to say. You only ruled on part of
6 it, Judge.

7 THE COURT: All right. Well, I just want
8 to make sure that whatever decision is going to be made
9 after this hearing, things don't change because of the
10 fact that I've ruled on this, that part of that motion
11 for summary judgment - after the Rule 11 Agreement - it
12 doesn't affect the Rule 11 Agreement - the motion to
13 sever; am I correct?

14 MS. BAYLESS: No, Your Honor. I'm sorry.
15 We knew about your ruling when we did the Rule 11.

16 THE COURT: Okay. All right. I just
17 wanted to make sure. Okay.

18 MR. SPIELMAN: I'm sorry. Just to be
19 clear. I think I'm -- I think just to be clear. The
20 status conference relative to the summary judgment, I
21 believe, is with regard to the Co-Trustees' pending
22 summary judgment against Ms. Curtis which has been set
23 for a hearing but which the Court switched to its
24 submission docket.

25 THE COURT: Okay. So, Ms. Bayless, would

1 you like to speak on... I'm not... Let me see about
2 this. Yeah, I want [technical interruption] this motion
3 to sever and the part of the Rule 11 Agreement that
4 relates to that.

5 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

6 ARGUMENT BY MS. BAYLESS:

7 MS. BAYLESS: Okay. Well, Judge, I don't
8 have the Rule 11 Agreement in front of me, but I think I
9 remember enough to answer your question. The
10 severance --

11 THE COURT: I'll be glad to read to you
12 the significant portion that relates to your client,
13 okay?

14 MS. BAYLESS: Okay.

15 THE COURT: It says, "Plaintiff Carl
16 Brunsting requests the Court not rule on the portion of
17 his July 9th, 2015 Motion for Partial Summary
18 Judgment" - and maybe you've already said this has been
19 taken care of - "Carl sees the determination as a matter
20 of law that disbursements in 2011 of Exxon Mobile stock
21 and Chevron stock were improper distributions for which
22 Anita as the Trustee making the disbursements is
23 liable."

24 Now that -- is that issue connected to
25 this motion to sever?

1 MS. BAYLESS: Yes, Your Honor, in a sense
2 that the Court made no ruling on that portion of my
3 motion, and the parties have been attempting to work out
4 a settlement of the remaining issues. And when I say
5 "the parties," I mean my client and Anita and Amy, the
6 Co-Trustees. I've also had discussions with Carole
7 Brunsting about some issues, but I've been working on
8 trying to get issues resolved, and I think progress has
9 been made on some fronts.

10 But the question about the ruling on the
11 motion for summary judgment was part of why we want to
12 sever these issues. Those are different questions than
13 what are presented by Candy Curtis. And, frankly,
14 Judge, there are -- everybody in this Rule 11 has their
15 own issues. I think the Co-Trustees are interested in
16 getting in a posture where they could have a final
17 judgment and some finality to issues with Candace
18 Curtis, and we want to get in a position where we can
19 try our issues separately from Candy Curtis. And,
20 frankly, you know, the cleaner way to do that is a
21 motion to sever which is what we had been discussing in
22 our settlement discussions. But, if the Court doesn't
23 grant the motion to sever, I'm going to file a motion
24 for separate trials because my client would be
25 prejudiced in trying to present a case that has two

1 plaintiffs that have different issues. I don't even
2 know how the Court can do that very realistically and I
3 certainly -- I think there's been enough hostility
4 toward my -- me, mainly, by Candy Curtis that I'm not
5 interested in the prejudice that could result from some
6 type of a joint trial where we're supposed to be on the
7 same side, and we don't even have the same issues.

8 So, the discussion was - and depending on
9 what the Court does on the Co-Trustees' motion for
10 summary judgment - severance may be the most efficient
11 way to deal with it. If the Court disagrees with that
12 for some reason, then we're still going to have to
13 address the issue of trying these cases separately. And
14 I think the Co-Trustees - I don't mean to speak for
15 them; they can speak to this - but I think their
16 position is they need to try the issues against Candy
17 Curtis and get those finalized and know that they are
18 put to bed so that they have some framework within which
19 we can continue our settlement discussions.

20 My client, Your Honor, frankly, just as a
21 little bit of background, it's very important for my
22 client to get this matter resolved. Now, he suffered a
23 rare and usually fatal form of encephalitis in 2011.
24 And since Nelva Brunsting's death, he's not received any
25 support or assistance, and his condition is physically

1 and mentally deteriorating, and he's going to need
2 expensive care, and he's going to need some adjustments
3 made because he's already fallen and broken a hip, had
4 to have emergency surgery which, in a situation like his
5 and his past medical history, is a very serious
6 situation and, again, life-threatening. So, we are
7 making every effort and exploring every possibility of
8 getting the case resolved, and it's a big muddle; it
9 doesn't seem to be going anywhere. I don't know if that
10 answered your question, but that kind of gives you the
11 background for that Rule 11.

12 THE COURT: So, just the idea -- and I'm
13 not going to hold you to this, but I'm just trying to
14 get my hands around this case. The idea is if this was
15 severed you -- your client could make a settlement
16 arrangement or an agreement with the Co-Trustees on some
17 of the issues that are involved in this motion for
18 summary judgment that's still pending, correct?

19 MS. BAYLESS: That's correct. That's
20 correct.

21 THE COURT: For example, whether your
22 client triggered the trust forfeiture provisions or
23 similar provisions; is that right?

24 MS. BAYLESS: That's right.

25 THE COURT: Now, do you distinguish the

1 type of resistance that your client made against the
2 Trustees different from Ms. Schwager's client in regard
3 to their allegations of forfeiture provisions?

4 MS. BAYLESS: Yes, Your Honor. I mean --
5 yes. They have an entire claim that the -- as I
6 understand part of what they're asserting, at least - is
7 that the whole document is forged or it's some type of
8 cut-and-paste document, that there is that type of
9 situation ongoing. And I had Janet Masson look at the
10 originals early on and eliminate those issues when I
11 first heard them raised. We're not addressing any of
12 those issues. Likewise, we haven't gone out and sued
13 every party in the case including the judge and the
14 court reporter and the clerk and everybody else who
15 might have come near the courtroom when a hearing was
16 going on. There are any number of differences between
17 the two claims or the two cases. And frankly, the whole
18 issue of whether they can be separated is sort of a non
19 issue because they were separate lawsuits to begin with.
20 So, there's no question that they can be separate. And
21 the beauty of that situation is the inevitable appeal
22 that will result from whatever Ms. Curtis -- the ruling
23 on Ms. Curtis' claims are - or is - will be able to
24 proceed through the appellate court and there be some
25 finality.

1 Everything that Ms. Curtis has touched in
2 this case has become 10 to 20 times more litigious than
3 it needs to be, more contentious than it needs to be.
4 And whether it's done in a clean way with the severance,
5 whether it's done where everybody is still lumped
6 together and there is separate trials -- I have had --
7 my client has been contacted by Ms. Curtis and Rik
8 Munson who helps her with this case. And the most
9 incredibly ridiculous and slanderous things have been
10 said to my client about me in attempt to get my client
11 to listen to them and not to listen to me. That's going
12 to go on in a trial, Judge. That's going to be
13 prejudicial to anything that I try to put on for my
14 client assuming that I try to put anything on because I
15 think we can get it resolved. I think rational people,
16 reasonable people, can get these issues resolved, and I
17 think progress has been made in that direction. We're
18 not there. We're not presenting a settlement to the
19 Court, but things have to be calmer in order to
20 accomplish these things, and they're not calmer when Ms.
21 Curtis is involved.

22 THE COURT: Okay. I'm certainly going to
23 hear from her counsel.

24 THE COURT REPORTER: Judge? Judge
25 Horwitz?

1 THE COURT: Hold on just a second.
2 This is for Mr. Mendel or Mr. Spielman:
3 If I should sever this out, what is your
4 position on that as far as it affecting your client?
5 does it -- it creates, potentially, two separate trials.

6 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

7 ARGUMENT BY MR. MENDEL:

8 MR. MENDEL: Well, Your Honor, we
9 recognize that there's, potentially, two separate
10 trials. The -- but given the progress that has occurred
11 between Ms. Bayless' client and the Co-Trustees, we
12 believe that being carved out as a separate trial which
13 would still ultimately need to result in a severance so
14 that the appellate timetable as to Ms. Curtis will be
15 separate from the rest of us. But we believe the
16 severance is going to significantly increase the
17 reasonable probability of a settlement which is good for
18 our clients. Also, it reduces - which is great for the
19 Court - is that it will significantly decrease, we
20 believe, the time -- we're set on April 4th on a
21 two-week trial docket; we believe it would reduce the
22 time necessary to address the claims just to be asserted
23 by Ms. Curtis. And so, we see value in increasing the
24 probability of settlement with one party and decreasing
25 the time that's going to be necessary for a trial. And

1 I would point out - we don't even think we need to get
2 to a trial because there's no evidence, absolutely no
3 evidence, against our summary judgment. But if we -- if
4 we do need to go to trial, then we think it should just
5 be a one-week period and let it be with the most
6 litigious person in this entire case.

7 THE COURT: So, just --

8 MR. MENDEL: We're ready for trial. We
9 want to go to trial. I want to be clear about that. If
10 we can't have our summary judgment, we want to go to
11 trial.

12 THE COURT: So, just so I understand
13 clearly, and it may be obvious.

14 On the pending motion for summary judgment
15 that was filed on or about November 5th - you wish the
16 Court to consider this as solely a motion for summary
17 judgment against Ms. Curtis.

18 MR. MENDEL: That's correct, Your Honor.
19 We're reserving all our rights. In the severed action,
20 we're reserving all our rights against Carl Brunsting
21 just like Carl Brunsting's reserving his rights against
22 the Co-Trustees. We want our MSJ to be dully considered
23 as to Candace Curtis and no one else.

24 THE COURT: And -- but you're reserving
25 the right for to reset an oral hearing or written

1 submission the same summary judgment issues against Ms.
2 Bayless' client should that come to pass?

3 MR. MENDEL: Well, that's true, but if
4 we're in a severed action, we've discussed - Ms. Bayless
5 and myself and Mr. Spielman - that we would be -- we
6 would, in reasonable probability, be tendering a -- an
7 agreed docket control order or we would come back to the
8 Court and ask for a docket control order to address --
9 as Ms. Bayless pointed out, there are issues between her
10 client and our clients that are different from Ms.
11 Curtis'. And, yes, we may be coming back and asking for
12 that, and they may be considered in the future. But our
13 issues with Mr. Brunsting and those of Curtis' are
14 divergent in many ways.

15 THE COURT: Okay. Mr. Spielman, do you
16 have anything to add to that before I talk to Ms.
17 Schwager?

18 MR. SPIELMAN: Yes, Judge, I always have
19 something to add to that. I would just --

20 THE COURT: I thought that might be the
21 case.

22 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

23 ARGUMENT BY MR. SPIELMAN:

24 MR. SPIELMAN: I would just say, Your
25 Honor, that the motion for summary judgment specific to

1 Ms. Curtis is wholly briefed by the parties; it is ripe
2 for judgment; it solves a ton of problems which Ms.
3 Bayless has eloquently described and accurately fully
4 described.

5 I'll add that on behalf of Mr. Mendel - my
6 opinion - that Mr. Mendel has received similar hostile,
7 inappropriate, slanderous contact. I haven't seen
8 what's been written about Ms. Bayless, but I have seen
9 some, at least of what's been written about Mr. Mendel;
10 and frankly, frankly, it's not remotely consistent with
11 Steve Mendel, the person who's on this Zoom call and
12 just this pattern of aggressive rhetoric and spiraling
13 out of control nonsense from Ms. Curtis is -- it is the
14 single reason why these people have not received what
15 they are supposed to receive years ago, you know. And
16 it wasn't appropriate to talk about this during Carole's
17 emergency motion. But it speaks to the reason why she
18 hadn't gotten her money yet; it speaks to the reason why
19 Carl hasn't gotten his money yet; it speaks to the
20 reason why Amy and Anita, even as individuals, haven't
21 gotten their money yet. This whole thing has been just
22 ridiculously nonsensically. And there are Courts that
23 have used those words as well, Judge; this is not just
24 me pontificating. I'm using things that other judges in
25 other courtrooms have said about Ms. Curtis and her

1 claims. And the time for this case to be resolved as to
2 Ms. Curtis is now. Ideally, that's through the summary
3 judgment, and if it has to be through the trial - so be
4 it. And that's my thought on that.

5 THE COURT: Okay. Before Ms. Schwager
6 speaks, I'll just make one little comment.

7 You know, it's a pleasure to work with
8 veteran attorneys, and I appreciate it, but I always get
9 a little bit of an ironic smile when I hear veteran
10 attorneys say never before have they have heard such
11 unfounded and ridiculous and, you know, statements.
12 Each lawyer's charged with zealous advocacy on behalf of
13 their client. And so, when lawyers, especially seasoned
14 lawyers, come to me with - I've never heard such
15 ridiculous and unfounded things, I -- if you're anything
16 like me, and I'm sure you've practiced law a long time,
17 you probably heard it all many times before. So, that
18 doesn't necessarily invalidate the authenticity of your
19 argument. But the Courts take such words with a grain
20 of salt.

21 Now, Ms. Schwager, I'd like you to
22 respond, if you could, to the argument about severing
23 this so that you, alone, would be facing a summary
24 judgment -- your client, alone, would be facing a
25 summary judgment and how she could be penalized by such

1 severance.

2 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

3 ARGUMENT BY MS. SCHWAGER:

4 MS. SCHWAGER: Your Honor, I -- this
5 really doesn't surprise me. This case has gone on 10
6 years, and just when you think you're getting towards
7 the finish line, they throw another wrench in it.

8 We started out in federal court. The
9 first lawsuit ever filed between any of these parties
10 was my client in federal court; that case was never
11 invalidated. My client was never called weird names by
12 the judges. That case - we won an injunction, and
13 they've been trying to get away from it ever since.
14 Maybe that's their thought in doing the severance, is
15 somehow doubt in the effect of the injunction.

16 When you told us to go to mediation, they
17 qualify -- the condition was that all claims had to be
18 settled or none of them. Had they divided into the five
19 accounts they were supposed to in 2013 when the Court
20 ordered, it might -- I might not care so much, but I do
21 have the obvious question of - who is going to pay their
22 attorneys' fees for two trials when two trials aren't
23 needed? It's not correct to say that we have different
24 issues. And that's not the standard. The standard is
25 not - do we have a different question or two from them

1 that -- than they have? I suppose the other parties in
2 this case may not have an interest in the injunction
3 that's protected the Trust all these years, but that's a
4 common issue that has been there to help put all of the
5 parties as against the Trustees' misused funds.

6 But, the law states not only that the case
7 would be proper to be severed and that it involved more
8 than one cause of action, but the severed claim is not
9 so interwoven with the remaining action; they involve
10 the same facts and issues.

11 What is very maddening to me is - as you
12 know, we have challenged the jurisdiction of this court
13 because of the action that we had in federal court.
14 What happened was Jason Ostrom - Candace Curtis' counsel
15 at the time - polluted diversity on purpose by making
16 Candy a nominal defendant in a claim and managed to use
17 that to her case over to probate court. So, we went
18 through the appropriate channels. We challenged that.
19 We're here -- we're here in their case. I'm actually --
20 we're in the case that Ms. Bayless filed for us to be
21 drug over into this court pretty much against our will
22 at the time. I mean, we are now litigating in good
23 faith and got the docket control order. I feel like
24 this is some scheme on the part of counsel to deprive
25 Candace of her portion of the inheritance. Since it has

1 not been divided in a separate trust account for her,
2 then I think I have reason to have concern for that
3 about who's going to pay the fees? Who's going to pay
4 the doubled [sic] fees? Are these going to be
5 attorneys' fees that the Trust incurs twice or are they
6 paying their own fees? We've asked for those fee bills
7 for months, and we've not received any of that.

8 And the other issue that Mr. Spielman
9 brought up about hostile emails. I don't know what
10 family doesn't have hostile communications going on in
11 the course of the 10 years of litigation; certainly that
12 has gone on. I don't know about it all. Largely, it
13 flies under the radar, and I see it later; but I can
14 tell you that there have been talks behind closed doors
15 trying to settle this case, not just trying to stir the
16 pot. And I just think that severance is not the
17 solution for whatever objectionable emails counsel is
18 finding that my client wrote. As long as this is one
19 nucleus of operative fact and one law of fiduciary duty,
20 I don't see why it needs to be separate. I also don't
21 see why it needs to be severed for them to settle. If
22 they have reached a settlement, I just don't understand
23 why they need to have a severance to accomplish that.

24 But to the extent that it doesn't
25 prejudice my client's rights or her money, the

1 attorneys' fees as they would be charged against the
2 parties, then I suppose we would have no objection, but
3 our objection is based upon these ever-escalating
4 attorneys' fees that are already admittedly over a
5 half-a-million dollars for -- they keep blaming Candy
6 for litigation, but most of the litigation was -- she
7 was successful in. So, I don't see how her pursuing her
8 legal rights and attempt to hold the Trustees
9 accountable and obtaining release stating that they were
10 breaching their duties, I don't see how that's worthy of
11 so much contempt from the rest of the parties or the
12 Trustees.

13 And Mr. Spielman admits that the single
14 reason Candace hasn't received what she's entitled to is
15 basically they don't like the way she emails or she
16 doesn't, what, she hasn't just succumbed to the
17 exorbitant settlement demands and say - I'll pay all the
18 fees myself? I don't know what it is that she's doing
19 besides litigating and winning that has been so
20 prejudicial to any party in this case. And I don't know
21 why fees haven't been sought from her before in federal
22 court if that's what they contend was appropriate.

23 You know, but this fee issue is running
24 this whole thing. All this is about fees because nobody
25 really has a claim against anyone except my client. My

1 client made fiduciary duty claims. The claims asserted
2 against my client are admittedly frivolous. She was
3 sued as a nominal defendant to get her into your court.
4 So, we -- you know, the ultimate result would be we'd be
5 left in a case that we never filed in, we never appeared
6 in, you know, as a nominal defendant rather than as a
7 plaintiff which is what we filed in a federal court.

8 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

9 THE COURT'S RULING:

10 THE COURT: Thank you. Your words are
11 well-taken by the Court. Normally, the Court is very -
12 I don't know what the word is - supportive of judicial
13 economy and not creating more work for the Court, also
14 not incurring more attorneys' fees; but certainly the
15 Co-Trustees would have the right - should they want to -
16 a nonsuit against Carl Brunsting, Ms. Bayless' client,
17 in their motion for summary judgment. And certainly the
18 Court has the right, at a later time, to rule on
19 attorneys' fees along the lines to what you pointed out.

20 And given all of this, I'm inclined to go
21 ahead and sign the order severing this matter so long
22 as -- we're not dealing with the attorneys' fees at this
23 point, but it will come up. So, I'm going to go ahead
24 and sign that order.

25 So, having dealt with the motion to sever

1 and the water rights or the water board, I'm trying to
2 think if there's something else I need to bring up.

3 I owe you a ruling on the motion for
4 summary judgment taking into account what we're doing
5 today, and I will have that decision made by next week
6 without belaboring the point.

7 Does anybody else have anything they wish
8 to say? Ms. Bayless?

9 MS. BAYLESS: No, Judge, I'm done.

10 THE COURT: Ms. Schwager?

11 MS. SCHWAGER: No, that's all, Judge.

12 THE COURT: Mr. Mendel?

13 MR. MENDEL: No, sir.

14 THE COURT: Mr. Spielman?

15 MR. SPIELMAN: No, sir.

16 THE COURT: And Carole Brunsting, I know,
17 nominally, you don't have a dog in this fight other than
18 the attorneys' fees issue which is important to you.
19 But before I even ask you that, how are you doing?

20 MS. CAROLE BRUNSTING: Well, I'm probably
21 about a -- I'm doing probably about as well as I can
22 with the situation right now.

23 THE COURT: Have you kind of
24 psychologically assimilated your situation where it's
25 not as -- let me put it this way: Are you able to sleep

1 at night?

2 MS. CAROLE BRUNSTING: When they ask you
3 on a scale of 1 to 10, unfortunately that number is
4 still going up. So, no, I'm not quite there yet.

5 THE COURT: Well, I pray that you will get
6 there, and I hope you do better.

7 MS. CAROLE BRUNSTING: Well, there's still
8 just some unknowns that I'm dealing with; and so, until
9 all that gets resolved, it's just been a lot to deal
10 with.

11 THE COURT: Well, your confusion and
12 anxiety is entirely appropriate. So, given -- given
13 your concerns, I wouldn't start beating on yourself for
14 being confused and anxious and depressed in accompanying
15 emotions. I hope we can resolve this and you can get
16 some family care and comfort.

17 MS. CAROLE BRUNSTING: Well, I've been
18 paired up with -- I've been paired up with -- M.D.
19 Anderson pairs you up with people that have been through
20 a similar situation as yourself; and so, I've been
21 paired up with few women that have been very good with
22 coaching me and providing a lot of support. So, that's
23 been really, really helpful.

24 And then I guess that as far as this
25 trust - and unfortunately, it is something that I've

1 been talking with my counsel and all that at M.D.
2 Anderson - I guess the fear for me is because I am pro
3 se, I guess I'm a bit concerned about what happens to me
4 in this situation especially since I don't have legal
5 counsel and because the money is really important to me
6 now more so than ever because I didn't realize how
7 expensive cancer can -- I didn't realize how this can
8 get expensive rather quickly and ongoing care and things
9 like that. So, there is...

10 THE COURT: Hopefully, we can get an end
11 to this so you can get some more money.

12 All right. At this time, I'm going to
13 excuse all the parties. I thank you very much. And we
14 will sure visit again soon. Thank you. Bye-bye.

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1 The State of Texas)
2 County of Harris)
3

4 I, Hipolita Lopez, Official Court Reporter in and
5 for the Probate Court Number Four of Harris County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record
14 truly and correctly reflects the exhibits, if any,
15 admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$224.00.
18 and was paid by MS. CANDACE CURTIS.

19 WITNESS MY OFFICIAL HAND this the 20th day of
20 February, 2021.

21
22 /s/ Hipolita G. Lopez
23 HIPOLITA G. LOPEZ, Texas CSR #6298
24 Expiration Date: 10-31-22
25 Official Court Reporter
Probate Court Number Four
Harris County, Texas
201 Caroline, 7th Fl.
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