
**MEMORANDUM OF LAW AND FACTS IN SUPPORT OF COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

To The Honorable Judge of Said Court:

I. Introduction

This petition seeks to remedy a fundamental jurisdictional error by a statutory probate court. The Estates of Elmer H. Brunsting and Nelva E. Brunsting were probated through simple pour-over wills under independent administration, with the sole devisee being an *inter vivos* trust. As Texas law requires, the probate court's limited oversight role terminated once the inventories were approved and the dockets were closed.

Days later, the independent executor initiated a new lawsuit in the same probate court concerning the administration of the trust. This action, along with several subsequent ancillary proceedings, was conducted without subject-matter jurisdiction. Texas Estates Code § 402.001 expressly prohibits any further action in a probate court after the inventory is approved in an independent administration, except where specifically authorized by statute. No such authorization exists for this trust dispute. Petitioner requests a declaratory judgment that all orders emanating from these unauthorized ancillary proceedings are void and must be vacated.

II. Parties

A. Plaintiff

1. Candace Louise Curtis is a resident of California, lawful Trustee for the Brunsting Family Living Trust and an income beneficiary for said trust.

B. Defendants

1. Defendant Carl Henry Brunsting is believed to be; a resident of Montgomery County, a lawful Co-Trustee for the Brunsting Family Living Trust and an income beneficiary for said trust. Carl was formerly Independent Executor for the estates of Elmer and Nelva Brunsting and may be served with process at his last known address of 23410 Saxon Way, Hockley, TX 77447 Houston, Texas 77081 or through his counsel of record. It is believed that Carl's attorney of record, Bobbie G. Bayless, may waive service on Carl's behalf.
2. Defendant Bobbie G. Bayless (SBN: 1940600) was Carl Brunsting's counsel of record in the probate court theater until February 19, 2015 when Carl resigned as Independent Executor and substituted his wife Drina as alleged attorney in fact. Defendant Bobbie G. Bayless may be served with process at her office at Bayless & Stokes 2931 Ferndale St. Houston, Texas 77098, or wherever else she may be found

3. Defendant Anita Kay Brunsting was an alleged Co-Trustee for the Brunsting Family Living Trust and an income beneficiary for said trust. Anita Brunsting, (Anita) is a resident of Texas that may be served with process at her home at 801 Bassington Ct. Pflugerville Texas 78660 or wherever else she may be found.
4. Defendant Stephen A. Mendel was Anita Brunsting's counsel of record in the probate court theater. (SBN: 13930650) info@mendellawfirm.com. Defendant Stephen A. Mendel is a resident of Texas that can be served at The Mendel Law Firm L.P. 1155 Dairy Ashford, Suite 104 Houston, TX 77079 or his residence 19419 KESSINGTON LN HOUSTON TEXAS 77094, or wherever else he may be found.
5. Defendant Amy Ruth Brunsting was an alleged Co-Trustee for the Brunsting Family Living Trust and an income beneficiary for said trust. Defendant Amy Ruth Brunsting can be served at 2582 Country Ledge, New Braunfels, Texas 78132, or wherever else she may be found.
6. Defendant Neal Spielman was Amy Brunsting's counsel of record in the probate court theater. (SBN: 00794678) nspielman@grifmatlaw.com Defendant Neal Spielman can be served at his law firm, Griffin & Matthews

1155 Dairy Ashford, Suite 300 Houston, Texas 77079, or wherever else he may be found.

7. Defendant Carole Ann Brunsting was an income beneficiary for the family trust. Defendant Carole Ann Brunsting can be served at her home 5822 Jason St. Houston, Texas 77074, or wherever else she may be found.
8. Defendant John Bruster Loyd (SBN: 24009032) bruse@jgl-law.com. Defendant John Bruster Loyd was Carole Brunsting's counsel of record in the probate court theater. Defendant John Bruster Loyd may be served with process at his law office at Jones, Gillaspia & Loyd, L.L.P. 4400 Post Oak Pkwy, Suite 2360 Houston, TX 77027, or wherever else he may be found.
9. Defendant Candace Kunz-Freed was Elmer and Nelva Brunsting's estate planning attorney with Vacek and Freed P.L.L.P. (SBN: 24041282) candace@freedlawyer.com. Defendant Candace Kunz-Freed is a resident and citizen of Texas, with a principal place of business in Harris County, Texas that may be served with process at her place of business of 9545 Katy Freeway, Suite 390, Houston, Texas 77024 or wherever else she may be found.

10. Defendant Cory Reed (SBN: 24076640) creed@thompsoncoe.com, was Candace Kunz-Freed's malpractice insurance company attorney in the District Court and in the probate court theater. Defendant Cory Reed, is an adult resident and citizen of Texas with a principal place of business in Harris County, Texas and may be served with process at his place of business at One Riverway, Suite 1400 Houston. Texas 77056 or wherever else he may be found.

III. Factual and Procedural Background

1. In 1996, Elmer H. Brunsting and Nelva E. Brunsting created the Brunsting Family Living Trust, which they later amended and formally restated in 2005. Concurrent with the 2005 restatement, they each executed pour-over wills that directed independent administration and named the trust as the sole devisee of their respective estates (Ex. 1-2), (Ex. 2-2).
2. Elmer H. Brunsting passed away on April 1, 2009 (Ex. 1-1). His will was admitted to probate in Harris County Statutory Probate Court No. 4 under Cause No. 412,248. On August 28, 2012, Letters Testamentary for independent administration were issued to Carl H. Brunsting without challenge (Ex. 1-3).
3. Nelva E. Brunsting passed away on November 11, 2011 (Ex. 2-1). Her will was admitted to probate in the same court under Cause No. 412,249, and Letters

Testamentary for independent administration were also issued to Carl H. Brunsting on August 28, 2012 (Ex. 2-3).

4. On March 26, 2013, the Independent Executor filed the Inventory, Appraisement, and List of Claims for both estates (Ex. 1-4, 2-4).
5. **On April 4, 2013, the Statutory Probate Court entered orders approving the inventories for both estates** (Ex. 1-4, 2-5). On that same day, the court entered drop orders closing the probate dockets for both estates thus, beginning independent administrations (Ex. 1-5, 2-6). No claims were ever brought against either estate (Ex. 1-6, 2-7).
6. **On April 9, 2013, five days after the inventories were approved and the dockets closed**, Carl Henry Brunsting filed a new “Petition for Declaratory Judgment” in the probate court under Cause No. 412,249-401 (the “Ancillary Proceeding”) (Ex. 3-1). This new lawsuit concerned the administration of the *inter vivos* trust and sought an accounting, damages, and other relief against certain trust beneficiaries.
7. The probate court subsequently created several additional ancillary dockets under the parent cause number of the closed estate of Nelva E. Brunsting:

- **No. 412,249-402:** Created to receive the remand of a cause of action filed by Petitioner Curtis in the U.S. District Court for the Southern District of Texas. After the federal court dismissed the case under the probate exception, the Fifth Circuit reversed, finding the case fell *outside* the probate exception. *Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013) (Ex. 4-8). The probate court improperly accepted the matter as an in-state transfer (Ex. 4-3).
- **No. 412,249-403:** Created when the probate court, citing its authority over matters incident to an estate, transferred a survival action from the 164th Judicial District Court (Ex. 4-1, 4-2). This transfer occurred despite the fact that no estate administration was pending at the time as required by estates code §34.001.
- **No. 412,249-404:** Created from Petitioner’s filing of a statutory bill of review challenging the probate court’s denial of her Plea to the Jurisdiction.
- **No. 412,249-405:** Created by severing parties from Cause No. 412,249-401.

8. All subsequent actions and orders in these ancillary proceedings, from which Petitioner seeks relief, occurred after the probate court's statutory authority over the independent administrations had expired.

IV. Argument and Authorities

Subject-matter jurisdiction is a question of law that cannot be waived and may be raised at any time. The Statutory Probate Court acted without jurisdiction when it entertained the Ancillary Proceeding, rendering its subsequent orders void.

C. The Probate Court's Jurisdiction Was Terminated by Statute

The purpose of independent administration is "to permit an executor, free of judicial supervision, to effect the distribution of an estate with a minimum of cost and delay." *Corpus Christi Bank & Tr. v. Alice Nat'l Bank*, 444 S.W.2d 632, 634 (Tex. 1969). To that end, the legislature strictly limited the probate court's role. That limitation is codified in Texas Estates Code § 402.001, which states:

When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court... **further action of any nature may not be**

had in the probate court except where this title specifically and explicitly provides for some action in the court.

The language is unambiguous. The approval of the inventory is the terminal event that divests the probate court of jurisdiction over an independent administration, barring a specific statutory exception. Here, the court approved the inventories on April 4, 2013. The Ancillary Proceeding was filed five days later. The action is therefore void unless it falls within one of the narrow statutory exceptions.

The Estates Code provides an exhaustive list of authorized actions, none of which were stated and none of which apply here. A court may act on matters concerning: an executor's bond (§ 401.005), digital assets (§ 402.003), family allowances (§ 353.051), demands for accounting (§ 404.001), removal of an executor (§ 404.003), or suits on rejected claims (§ 355.064). The Ancillary Proceeding—a declaratory judgment action concerning trust administration—does not fall under any of these exceptions. The executor's petition itself cites the Texas Property Code and the Civil Practice and Remedies Code, not any provision of the Probate Code that would grant the probate court continuing jurisdiction.

D. The Trust Dispute is Not a Probate Matter and Falls Outside the Probate Court's Jurisdiction

The controversy initiated by the executor is, at its core, a dispute over the internal administration of an *inter vivos* trust. It is not a probate matter, a conclusion reinforced by the United States Court of Appeals for the Fifth Circuit in this very case. In *Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013), the court analyzed whether the federal “probate exception” barred federal court jurisdiction over the dispute. The Fifth Circuit held that the exception did **not** apply, reasoning that:

“[P]roperty contained in a Texas inter vivos trust is not subject to administration in probate court... Because the... Trust assets are not part of the decedent’s estate that is being administered in the Probate Court, the district court’s adjudication of the parties’ rights to the trust assets does not interfere with the Texas probate proceedings. Id. at 410.”

This federal precedent squarely addresses the nature of this controversy. It confirms that the assets of the Brunsting Family Living Trust are separate and distinct from the probate estates. The dispositive issue raised in the Ancillary Proceeding—identifying which instruments express the settlors’ true trust agreement—is a classic trust administration dispute that does not interfere with or require supervision from a probate court overseeing empty estates.

Petitioner’s federal case is *Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013). This opinion is highly relevant. It addresses the probate exception to federal court

jurisdiction when a trust is involved. The Fifth Circuit held that the probate exception did not apply because the trust assets were not in the custody of the probate court. The court emphasized that assets in an *inter vivos* trust generally avoid probate. This directly relates to the connection between a fully funded trust and a separate malpractice claim, as it examines the jurisdictional boundaries between probate and district courts when trust assets are at issue, and identifies what constitutes 'interference' with probate proceedings.

E. The Probate Exception and *Curtis v. Brunsting*

The very case Petitioner is involved in, **Curtis v. Brunsting*, 704 F.3d 406 (5th Cir. 2013)*, provides the framework for this analysis. The "probate exception" is a federal doctrine that prevents federal courts from interfering with state probate proceedings. The Fifth Circuit held that the probate exception did not apply, and therefore the federal court had jurisdiction. The reasoning is directly applicable here:

- **Trust Assets are Not Estate Assets:** The Court of Appeals recognized that assets held in an *inter vivos* trust are not part of the decedent's probate estate. The court stated, "property contained in a Texas *inter vivos* trust is not subject to administration in probate court."
- **No Interference with Probate:** Because the dispute was over trust assets that were not in the custody of the probate court, a ruling on the trust would not "interfere" with the probate court's administration of the (empty) estate.

This federal court ruling supports the argument that the trust dispute is a separate matter, distinct from the administration of the pour-over wills.

F. Separation of Trust Administration from Probate Administration

The core of the issue is that Petitioner is dealing with two separate legal proceedings that have a minimal and temporary overlap.

- **Probate Administration:** This involves admitting the will to probate and overseeing the executor's duty to gather the estate's assets and distribute them according to the will. In this case, the estate was empty by design. The only "distribution" was the legal formality of acknowledging that any unknown assets would "pour over" into the trust. Once the Inventory was approved showing no assets, the purpose of the probate was complete.
- **Trust Administration:** This involves the ongoing management of the trust according to its own terms. The dispute over "which instruments express the settlors' trust agreement" is a classic trust administration issue. It is a lawsuit to construe or interpret the terms of a trust, which does not require the supervision of a probate court overseeing a decedent's estate.

The trust dispute relates to probate only in the sense that the pour-over wills name the trust as the beneficiary. However, since there was nothing to pour over, that relationship is a legal fiction with no practical consequence for the jurisdictional analysis.

G. The Ancillary Trust Dispute Was Not “Incident to an Estate.”

To overcome the jurisdictional bar of § 402.001, the executor must argue that the trust dispute was a “matter incident to an estate.” This argument fails because the matter was not related to a *pending* probate proceeding in any meaningful way.

“Incident to an estate” jurisdiction exists to allow a probate court to resolve issues necessary for the complete settlement, partition, and distribution of the estate itself. Here, the probate proceeding for the pour-over wills was exceedingly narrow: to facilitate the transfer of any estate property to the designated devisee—the trust. Once the inventories were approved on April 4, 2013, showing no assets to administer, the estates’ property (or lack thereof) vested in the trust and the purpose of the probate was complete. The administrations were finished.

The use of a pour-over will created only a momentary, formal link between the estates and the trust. Because the estates were empty by design and the trust was fully funded, that link is a legal fiction with no practical consequence for jurisdictional analysis. The outcome of the trust dispute would not add or remove a single asset from the non-existent probate estates, nor was its resolution necessary to settle them. Therefore, the trust suit filed on April 9, 2013, was not “incident to” a *pending* probate proceeding; it was a new controversy concerning a separate legal entity filed after the conclusion of the estate administrations.

While Texas Estates Code § 32.005 grants statutory probate court’s jurisdiction over actions “related to a probate proceeding,” that grant is not limitless, particularly in the context of an independent administration. Section 32.005(b)

contains a critical limitation: “This section ... **may not be construed to expand the court’s control over an independent executor.**”

Furthermore, for jurisdiction to exist, a matter must be related to a *pending* probate proceeding. *See Goodman v. Summit at W. Rim, Ltd.*, 952 S.W.2d 930, 934 (Tex. App.—Austin 1997, no pet.) (a court may resolve ancillary claims only to the extent necessary to resolve claims within its original jurisdiction). The probate proceeding for a pour-over will is exceedingly narrow: its purpose is to recognize the will and facilitate the transfer of the estate’s property to the designated devisee—here, the trust.

Once the inventories were approved on April 4, 2013, the estates’ assets vested in the trust and the purpose of the probate was complete. The administrations were finished. Therefore, the trust dispute filed on April 9, 2013, was not “related to” a pending probate proceeding; it was a new and distinct controversy concerning the internal administration of a separate legal entity. No jurisdictional nexus existed between the administration of the estates’ minimal assets and the subsequent trust dispute.

H. The Limitation of "Incident to an Estate" Jurisdiction

The executor's argument for jurisdiction in the probate court is that the trust dispute is a "matter incident to an estate." However, the facts dismantle that argument:

- **No Pending Estate:** As this petition correctly argues, jurisdiction based on a matter being "incident to an estate" requires a *pending* estate administration. Once the inventory was approved and the docket closed, the independent administration was effectively complete. A lawsuit filed *after* that point cannot be incident to a concluded proceeding.
- **No Impact on the Estate:** The purpose of "incident to an estate" jurisdiction is to allow the probate court to resolve issues necessary to the settlement of the estate. Identifying the correct trust instrument had no bearing on the settlement of the empty estates. The outcome of the trust dispute would not add or remove any assets from the estates themselves.

I. The District Court Acquired Dominant Jurisdiction

The timeline of events is critical and unambiguous. The central controversy underlying all related litigation involves alleged illicit changes to the family trust. The sequence of filings is a critical fact that all but resolves the jurisdictional conflict between the state courts.

- **First-Filed Rule:** The general rule in Texas is that the court in which a lawsuit is first filed acquires dominant jurisdiction over a matter, to the exclusion of other courts of coordinate jurisdiction.
- **Application:** The malpractice claim, which arises from the same "single nucleus of operative facts" (the creation and amendment of the trust instruments), was filed in the District Court on January 29, 2013 (Ex. 4-1). The declaratory judgment action was not filed in the probate court until April 9, 2013 (Ex. 3-1).

The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other courts of coordinate jurisdiction. In re J.B. Hunt Transp., Inc., 492 S.W.3d 287 (Tex. 2016). That rule is dispositive here.

Because the District Court action was filed first, that court acquired dominant jurisdiction over the entire controversy. The probate court was therefore required to abate or dismiss the later-filed, duplicative action. Its failure to do so provides another independent ground for finding its subsequent orders void.

J. The District Court Possesses Original and Exclusive Jurisdiction Over This Trust Controversy.

The Legislature has placed jurisdiction for trust disputes squarely in the District Court. Texas Property Code § 115.001(a) states that “a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts.” While § 115.001(d) creates an exception for “jurisdiction conferred by law on a statutory probate court,” that exception is inapplicable. As established above, § 402.001 *divested* the probate court of any such jurisdiction once the inventories were approved. Accordingly, dominant jurisdiction over this trust controversy properly lies with the District Court.

K. In the Alternative, the Probate Court's Orders Are Void for Independent Reasons.

Even if the probate court had possessed subject-matter jurisdiction, its orders would be void for at least two independent reasons.

1. The Executor's Action Was Barred by the Four-Year Statute of Limitations.

The claims asserted in the probate court by the Independent Executor on behalf of the Estate of Elmer H. Brunsting were untimely. Mr. Brunsting passed away on April 1, 2009 (Ex. 1-1). Any claim by his estate was subject to the general four-year statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE § 16.004. The Ancillary Proceeding was filed on April 9, 2013, which is four years and eight days after Mr. Brunsting's death. Because the action was filed outside the limitations period, the court had no authority to grant relief on any claims.

2. The Proceedings Were Void Due to a Disqualifying Judicial Conflict of Interest that Violated Petitioner's Right to Due Process.

The proceedings in the probate court were tainted by an unaddressed judicial conflict of interest involving Associate Judge Clarinda Comstock. During the pendency of the ancillary matters, Judge Comstock was a defendant in a separate

federal lawsuit, *Johnston v. Dexel* (Ex. 4-4, 4-5). In that case, she was personally represented by the same law firm that was simultaneously representing the defendant law firm in the ancillary proceeding transferred from the 164th District Court No. 2013-05455 (Probate Court Cause No. 412,249-403). (Ex. 4-6, 4-7)

This dual representation creates an untenable conflict that mandates recusal. Texas Rule of Civil Procedure 18b(b) requires a judge to recuse in any proceeding where “the judge’s impartiality might reasonably be questioned.” The Texas Code of Judicial Conduct likewise requires a judge to “avoid all impropriety and appearance of impropriety.” Canon 2. A judge presiding over a matter where a party is represented by her own personal attorneys creates a clear appearance of impropriety. A reasonable member of the public would question whether the judge could rule fairly against a party represented by the lawyers defending her. This conflict strikes at the heart of judicial fairness and due process, compromised the structural integrity of the proceedings, and provides a separate and independent basis for finding the resulting orders void.

L. How It Relates to Probate

The trust dispute relates to probate in name only. The use of pour-over wills created a momentary, formal link between the estates and the trust. However,

because the estates were empty and the trust was fully funded, that link was legally insignificant for jurisdictional purposes. The lawsuit is a pure trust controversy, not a probate matter.

The facts show that the probate administration was a procedural formality that was already complete, and a court of general jurisdiction (the District Court) had already acquired dominant jurisdiction over the underlying dispute before the executor ever filed in the probate court.

V. Conclusion and Prayer for Relief

Petitioner respectfully requests that this Court take judicial notice of the attached exhibits as self-authenticating evidence of the relevant facts.

The orders issued by the Harris County Statutory Probate Court No. 4 in the ancillary proceedings are void. The court's jurisdiction over the independent administrations was statutorily terminated upon approval of the inventories. The subsequent lawsuit was a quintessential trust dispute, not a probate matter, as recognized by the Fifth Circuit. Furthermore, the District Court had already acquired first-filed, dominant jurisdiction over the controversy before the probate court action was ever initiated. For these reasons, all actions taken by the probate court in the ancillary proceedings were a legal nullity.

Petitioner Candace Louise Curtis respectfully prays that this Court grant summary judgment and enter a declaratory judgment that:

1. The Harris County Statutory Probate Court No. 4 lacked subject-matter jurisdiction over the ancillary proceedings docketed under Cause Nos. 412,249-401, 412,249-402, 412,249-403, 412,249-404, and 412,249-405;
2. Declare all rulings, orders, and judgments entered in said ancillary proceedings void *ab initio*; and that such orders be vacated, set aside, and held for naught; and
3. Issue an order returning Curtis v. Brunsting to the Southern District of Texas as there was no court in Texas authorized to receive it.

Petitioner further prays for all other relief, both general and special, to which she may be justly entitled.

Respectfully submitted,

Candace Louise Curtis Petitioner, *Pro Se*

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