## Dominant Jurisdiction

Southern District of Texas

Harris County District Court 164

Harris County Probate Court No. 4

## Statutory Probate Court Jurisdiction over Inter Vivos trusts

Was the Settlor a Decedent in a probate matter pending in the probate court at the time the independent executor filed his trust related tort suit in the probate court? [Local Rule 2.6.5 and Property Code § 115] Independent administration ends when the debts are paid and the assets have been distributed. Independent administration means independent of probate court jurisdiction. Was the independent executor foreclosed from filing his trust related tort suit in the probate court by the Decedents Will? Tex. Est. § 402.001 and dominant case law? Did Trust beneficiary Carl Brunsting ever have individual standing in the administration of the Settlors estates when the only Devisee was the trust?

## Absence of a controversy renders appeal moot

Bayless (Carl) named California resident and federal plaintiff Candace Curtis a Nominal Defendant only. Following the severance of the alleged consolidation of Carl and Candace claims, Bayless (Carl) filed a nonsuit making it clear that Bayless (Carl) never had a claim against Candace Curtis. Any argument Bayless (Carl) may have regarding this appeal is rendered moot by the absence of a controversy.

Cause No. 412,249 titled “Estate of Nelva Brunsting” is a container object. The only things in that container are the things that belong in that container. [Local Rule 2.2] listed in [Local Rule 2.5]

The Clerk shall maintain separate files for each sub-file number [Local Rule 2.4]

Cause No. 412,249-401 is a container object created to hold matters considered as ancillary to the base case [Local Rule 2.6] but do not belong in the base case. [Local Rule 2.5]

Ancillary Matters that belong in a different file with an ancillary or related case designation includes *“lntervivos Trust Actions (settlor is decedent in probate* ***pending*** *in subject court);”* [Local Rule 2.6.5]

Can you create a lawsuit in a court with no subject matter jurisdiction by combining two cases that are not really there?

[2014-05-09 Case 4-12-cv-592 [Doc 109] Ostrom Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-09%20%20Case%204-12-cv-592%20%5bDoc%20109%5d%20Ostrom%20Motion%20to%20Remand.pdf)

[2014-05-15 Case 4-12-cv-592 Doc 112 Order granting Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-15%20Case%204-12-cv-592%20Doc%20112%20Order%20granting%20Motion%20to%20Remand.pdf)

[2014-05-28 Case 412249 402 MOTION TO ENTER TRANSFER ORDER signed by Butts PBT 2014 184792.pdf](http://probatemafia.com/brunsting/2014-05-28%20%20Case%20412249%20402%20MOTION%20TO%20ENTER%20TRANSFER%20ORDER%20signed%20by%20Butts%20PBT%202014%20184792.pdf)

[2014-11-17 Mendel Notice of Appearance for Anita Kay Brunsting.pdf](http://probatemafia.com/brunsting/2014-11-17%20Mendel%20Notice%20of%20Appearance%20for%20Anita%20Kay%20Brunsting.pdf)

[2014-12-08 412249-401 Spielman Notice of APPEARANCE.pdf](http://probatemafia.com/brunsting/2014-12-08%20412249-401%20Spielman%20Notice%20of%20APPEARANCE.pdf)

[2015-02-19 Case 412249-401 PBT-2015-57597 Carl Resignation.pdf](http://probatemafia.com/brunsting/%5b13%5d%202015-02-19%20Case%20412249-401%20PBT-2015-57597%20Carl%20Resignation.pdf)

There ceased to be a controversy in the -401 when there was no plaintiff with standing.

[2015-03-09 Agreed Order to Consolidate cases.pdf](http://probatemafia.com/brunsting/%5b15%5d%202015-03-09%20Agreed%20Order%20to%20Consolidate%20cases.pdf)

**Failure to Render**

Jurisdiction is something possessed by courts, not judges. *Davis*, [956 S.W.2d at 557](https://casetext.com/case/davis-v-state-627#p557). A judge is an officer of the court, not the court itself. *Id.* at 557-58. However, "[a]lthough a judge is not a court, and jurisdiction is ordinarily vested in the court and not in its judges, the act of a judge within his jurisdiction may constitute the act of the court." *Davis*, [956 S.W.2d at 557](https://casetext.com/case/davis-v-state-627#p557).

The rules of practice and procedure in civil district court allow district judges to exchange courts and transfer cases from one court to another. *See* [Tex. R. Civ. P. 330(e)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts); *see also* Tex. Const. art. V, § 11 ("And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient . . . ."); *In re Catapult Realty Cap., L.L.C.*, No. 05-19-01056-CV, 2020 WL 831611, at \*5 (Tex. App.-Dallas Feb. 20, 2020, orig. proceeding) (mem. op.). Further, the rules allow district judges to "hear any part of any case or proceeding pending . . . and determine the same" and "to hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case." [Tex.R.Civ.P. 330(g)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts); *see also In re Catapult*, 2020 WL 831611, at \*5. However, the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. *In re Catapult*, 2020 WL 831611, at \*5. *Fischer v. Clifford Fischer & Co.*, No. 05-20-00196-CV, at \*6-7 (Tex. App. Aug. 16, 2022)

***A*. *Applicable Law***

The rules of practice and procedure in civil district court allow district judges to exchange courts and transfer cases from one court to another. *See* [TEX. R. CIV. P. 330(e)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts); *see also* TEX. CONST. art. V, § 11 ("And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient . . . ."); *Masa Custom Homes*, *L*.*L*.*C*. *v*. *Shahin*, [547 S.W.3d 332, 335](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p335) (Tex. App.—Dallas 2018, no pet.). Further, the rules allow district judges to "*hear* any part of any case or proceeding pending . . . *and determine the same*" and "*to hear and determine* any question in any case, and any other judge *may complete the hearing and render judgment* in the case." [TEX. R. CIV. P. 330(g)](https://casetext.com/rule/texas-court-rules/texas-rules-of-civil-procedure/part-ii-rules-of-practice-in-district-and-county-courts/section-11-trial-of-causes/certain-district-courts/rule-330-rules-of-practice-and-procedure-in-certain-district-courts) (emphasis added); *see also Masa Custom Homes*, [547 S.W.3d at 335](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p335). However, the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. *See Masa Custom Homes*, [547 S.W.3d at 335](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p335); *W*.*C*. *Bank*, *Inc*. *v*. *Team*, *Inc*., [783 S.W.2d 783, 785](https://casetext.com/case/wc-banks-inc-v-team-inc#p785) (Tex. App.—Houston [1st Dist.] 1990, no writ). When a judge has no authority to render an order or judgment, that order or judgment is void. *See Masa Custom Homes*, [547 S.W.3d at 338](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p338). An appellate court has no jurisdiction to consider the merits of an appeal of a void order or judgment. *See id*.

*Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.)*, No. 05-19-01056-CV, at \*9 (Tex. App. Feb. 20, 2020)

[the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. See Masa Custom Homes,…](https://casetext.com/case/catapult-realty-capital-llc-v-johnson-in-re-catapult-realty-capital-llc?jxs=tx&p=1&q=Impersonating%20an%20officer%20of%20the%20court&sort=relevance&type=case#uh650b667c9830c50029854c53)

*Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.)*, No. 05-19-01056-CV (Tex. App. Feb. 20, 2020)

**The Fiduciary Relationship**

"The relationship existing between a principal and his agent is fiduciary in nature. It requires loyalty and good faith, integrity of the strictest kind, and fair and honest dealing by the agent toward the principal. In this connection, it is said that one who occupies such a fiduciary relationship to another must measure his conduct by high equitable standards and not by the standards commonly required in business dealings between ordinary persons. Consequently, an agent has the duty of imparting to his principal every material fact relating to transactions within the scope of the agency on becoming aware of such facts during the course of the transaction. Good faith, honesty, and fair dealing should always prevail in any transaction in which one person is acting as the agent of another, and there should never be any concealment of matters that might tend to influence the agent's actions, to the prejudice of his principal.

"In every agency relationship, the principal is entitled to the unbiased judgment and best efforts of the agent. Furthermore, for obvious reasons founded on public policy, an agent may not assume any relation that is antagonistic to the duties owed by him to his principal. For example, An agent may not act in behalf of another whose interest is adverse to that of the principal, or act in a double capacity or for two or more principals, unless all of the principals consent to such representation with full knowledge of the facts. Again, an agent may not deal with the subject matter of the agency in such a manner as to injure the principal, or act in connection with the subject matter so as to secure for himself secret or unauthorized benefits. . . ." (Emphasis ours.)

*Anderson v. Griffith*, 501 S.W.2d 695, 700 (Tex. Civ. App. 1973)

**Failure to State a Claim**

Defendant Appellees Original Counter Claims:

[The pleader is required to allege facts that affirmatively demonstrate the court's jurisdiction to hear a case. See Tex. Ass'n of Bus., 852 S.W.2d at 446.](https://casetext.com/case/james-v-honorable-olen-underwood-honorable-patrick-sebesta-fid-deposit-co-of-md?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case#uh6509ce4e871e010028c55336)

*James v. Underwood*, 438 S.W.3d 704 (Tex. App. 2014)

[The general rule is that the allegations of the plaintiff's petition must state facts which affirmatively show the jurisdiction of the court in which the action is brought. Brown v. Peters, 127 Tex. 3…](https://casetext.com/case/richardson-v-first-nat-life-ins-co?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case#uh6509cdc9d90461002868e1cf)

*Richardson v. First Nat. Life Ins. Co.*, 419 S.W.2d 836 (Tex. 1967)

[“As a general matter, the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the case. See Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1…”](https://casetext.com/case/in-re-forlenza-1?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case)

[In re Forlenza](https://casetext.com/case/in-re-forlenza-1?jxs=tx&p=1&q=a%20complaint%20must%20contain%20a%20statement%20of%20jurisdiction&sort=relevance&type=case) 140 S.W.3d 373

**Complete want of Subject Matter Jurisdiction**

**Ancillary to What?**

A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending." *Bailey*, [862 S.W.2d at 585](https://casetext.com/case/bailey-v-cherokee-county-appraisal-dist#p585); *Estate of Hanau*, [806 S.W.2d 900, 904](https://casetext.com/case/estate-of-hanau-in-re#p904) (Tex.App.-Corpus Christi 1991, writ denied). Where the record does not reveal that a probate proceeding was taking place or was pending when suit was filed, section 5 of the probate code dealing with matters incident to an estate is not triggered. *Schuld v. Dembrinski,* [12 S.W.3d 485, 487](https://casetext.com/case/schuld-v-dembrinski#p487) (Tex.App.-Dallas 2000, no pet.); *Qualia v. Qualia*, [878 S.W.2d 339, 341](https://casetext.com/case/qualia-v-qualia-1#p341) (Tex.App.-San Antonio 1994, writ denied); *Sumaruk v. Todd*, [560 S.W.2d 141, 144](https://casetext.com/case/sumaruk-v-todd#p144) (Tex.Civ.App.-Tyler 1977, no writ). Hence, because no probate proceeding was ongoing or pending when TCB filed its foreclosure proceeding, the county court at law did not have exclusive jurisdiction over matters incident to Shwery's estate.

***B. Closing of the Independent Administration***

An independent executor may formally close an independent administration by filing a final account verified by affidavit. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 1999); *Estate of McGarr,* [10 S.W.3d 373, 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376) (Tex.App.-Corpus Christi 1999, no pet.). Section 151 of the probate code provides that:

When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court:

(1) a closing report verified by affidavit that shows:

(i) The property of the estate which came into the hands of the independent executor;

(ii) The debts that have been paid;

(iii) The debts, if any, still owing by the estate;

(iv) The property of the estate, if any, remaining on hand after payment of debts; and

(v) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

[Tex. Prob. Code Ann. § 151(a)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 2000).

The filing of such an affidavit and proof of its delivery terminates the independent administration and the power and authority of the independent executor. *Id*. at [§ 151(b)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed). At that point, persons dealing with properties of the estate or claims against the estate shall deal directly with the distributees of the estate. *Id*. The affidavit closing the independent administration gives the persons described in the will as entitled to receive particular assets the power to enforce their right to payment or transfer by suit. *Id*. at [§ 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373. It does not, however, relieve the executor of liability for any mismanagement of the estate or from liability for any false statements in the affidavit. [Tex. Prob. Code Ann. § 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373.

An independent administration also can be closed without filing an affidavit. Even in the absence of such an affidavit, an independent administration is considered closed when debts have been paid so far as the assets will permit and all property has been distributed. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau,* [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). This court has explained:

An independent administration of an estate is considered closed when the debts have been paid and the property has been distributed and there is no more need for administration. The filing of a verified final account with the probate court pursuant to [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) merely formally closes an independent administration.

*Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903); *see also McGarr,* [10 S.W.3d at 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376).

This Court has noted that we must look beyond the title of the final accounting to its contents to determine if the document is in fact a [Section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) affidavit. *Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). "If the instrument before the court is filed as the final accounting but is in reality only a presentation of the status of the estate and if it is apparent from the instrument that the estate is not ready to be closed, then, to close the estate would ignore the purpose of the statute." *Id*.; *accord Estate of Canales*, [837 S.W.2d 662, 669](https://casetext.com/case/estate-of-canales-in-re#p669) (Tex.App.-San Antonio 1992, no writ). Still, where, as here, the affidavit generally comports with the requirements of [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed), the Estate appears to need no further administration, the probate court has both approved the affidavit and allowed resignation of the administrators without appointing successors, the verified account is sufficient to close the administration. Even the probate court has no power to "disapprove" a final account.

*Texas Comm. Bk. v. Correa*, 28 S.W.3d 723, 727-28 (Tex. App. 2000)

**Mail Fraud**

[The federal mail fraud statute establishes criminal sanctions for anyone who, "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of f…](https://casetext.com/case/united-states-v-glover-72?jxs=9cir,us,1cir,2cir,3cir,4cir,5cir,6cir,7cir,8cir,10cir,11cir,dccir,fedcir,ustc,adminmat,fedreg,fedstat,fedsecsrcs&p=1&q=extremism&sort=relevance&type=case#uh650214215cd918002a39cd2d)

*United States v. Glover*, No. 16-4212 (4th Cir. Nov. 27, 2017)

## What Instruments?

2005 Restatement as amended in 2007

1st QBD valid but must be severed from Testamentary Power. fails on substantive ground and fails procedurally due to absence of two independent witness signatures. The QBD only applies to Nelva’s trust. The Testamentary Power fails on substantive ground and fails procedurally due to the absence of two independent witness signatures

2nd QBD Not valid on substantive ground, Instrument objected to as not in evidence and they have not produced three originals to match their three signature page versions. They have not attempted to introduce these three signature page versions and qualify them as evidence by witness testimony because they cannot. 2nd QBD does not rescind the 1st QBD but afforms it. QBD only applies to the Settlor that exercised the power (only applies to Nelva’s trust) Testamentary Power fails on substantive ground and fails procedurally due to absence of two independent witness signatures. Substantively it seeks to amend an irrevocable trust, is self-contradictory and the corruption of blood provisions offend public policy. It was a greedy beneficiary that colluded with the estate planning attorneys to create a series of illicit change instruments after the trust could no longer be altered or amended.

It may be hearsay that Nelva, when asked about the 2nd QBD, said she did no such thing! Three different signature pages have arisen as one version was filed into the record by Carole’s counsel, one version was filed by Anita and one by Amy. The Notary log shows 3 COT’s signed on August 25, 2010 but only 1 QBD. There is more but why beat a dead horse?

Changes made by the Vacek Law Firm working in concert with Anita Brunsting are what gave Anita Control over the trust. Anita’s intentional failure to account and failure to disclose is what compelled litigation and as alleged from the o0nset (In SDTX 2/27/2012 Doc 1 pg 20 para 4) Anita plannded to steal the trust in such a way that if anyone complained, she’d get to keep it.

Anita intentionally caused litigation to be brought in order to advance her 2nd QBD/TPA in Terrorem clause with corruption of blood argument, a theory that, if true, would enlarge her share. That is exactly what the Co-Trustee defendants conduct has since proven.

Co-Trustee Anita Brunsting had no standing to file counter claims against beneficiary Candace Curtis or beneficiary Carl Brunsting (Art. XII Section B 2005 Restatement) [Tab 4]. Neither beneficiary Anita Brunsting nor beneficiary Anita Brunsting had ground to sue against beneficiary Candace Curtis or beneficiary Carl Brunsting as all of the beneficiaries have the same rights. The trustees have obligations of a fiduciary nature. It is Co-Trustee Anita Brunsting that failed in her duty to account, (Art. XII Section E 2005 Restatement) [Tab 4]

The Report of Special Master and the hearing that followed showed that Anita failed to establish books and records of accounts, self-dealt and co-mingled assets and made unequal distributions and that none of these dealings were disclosed to Carl or Candace.

Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits, the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.

The full faith and credit clause, seems to forbid collateral attack in civil cases

Civil litigants do not lose their separate identity when their case is consolidated with another.

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100* is not *ESTATE OF NELVA BRUNSTING*

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (Curtis v Brunsting)* is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

*ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlors that created the family trust which, is the sole devisee of both decedents’ wills.

Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.

There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

DUE PROCESS

A trust is defined by an indenture. The indenture defines a relationship between a trustee (a fiduciary) and a beneficiary (cestui que) in regard to the property (Corpus) held in trust. After ten years, Appellee’s cannot produce a declaratory judgment or even a transcript of a substantive hearing in which a discussion was had and determinations were made regarding which instruments are being referred to when we say “The Trust”.

After ten years Appellee’s cannot produce, for the court’s review, even one substantive hearing in which sworn testimony was taken in evidence.