

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Candace Louise Curtis v. Anita Kay Brunsting; Does 1-100; Amy Ruth Brunsting

704 F.3d 406 (5th Cir. 2013) · No. No. 12-20164 · Decided January 9, 2013

SUMMARY

The Fifth Circuit held that the probate exception to federal diversity jurisdiction did not bar a beneficiary's claims against co-trustees of an inter vivos trust for alleged breaches of fiduciary duty. Applying *Marshall v. Marshall*, the court concluded that the trust property was not in the custody of the probate court and reversed the district court's dismissal for lack of subject-matter jurisdiction.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Patrick E. Higginbotham; Jerry E. Smith; Jennifer W. Elrod
JURISDICTION	Federal
DECIDED	January 9, 2013
DOCKET	No. 12-20164
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Curtis appealed the district court's sua sponte dismissal of her diversity action for lack of subject-matter jurisdiction under the probate exception.
STANDARD OF REVIEW	De novo review of a dismissal for lack of subject-matter jurisdiction.
PRECEDENTIAL VALUE	published, precedential
PARTIES	Candace Louise Curtis v. Anita Kay Brunsting, Does 1-100, Amy Ruth Brunsting

TOPICS

[subject matter jurisdiction](#) [probate procedure](#) [trusts](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

[civil procedure](#) [probate](#) [trusts](#) [appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the probate exception to federal diversity jurisdiction barred Curtis's claims concerning the administration of an inter vivos trust.
2. Whether the trust property was estate property within the custody or in rem jurisdiction of the probate court.
3. Whether the federal district court had subject-matter jurisdiction over Curtis's in personam claims for breach of fiduciary duty and related relief.

HOLDINGS

1. After *Marshall v. Marshall*, the probate exception bars federal jurisdiction only when the action seeks to probate or annul a will or seeks to reach and dispose of property in the custody of a state probate court.
2. The probate exception requires a two-step inquiry: whether the disputed property is estate property within the custody of the probate court and whether the plaintiff's claims would require the federal court to assume in rem jurisdiction over that property.
3. The probate exception did not deprive the federal district court of jurisdiction over Curtis's claims concerning administration of the inter vivos trust.

KEY QUOTATIONS

“After Marshall, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) “seek[ing] to reach a res in custody of a state court” by “endeavoring to dispose of [such] property.”” (at 410-11)

“As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, Marshall requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff’s claims would require the federal court to assume in rem jurisdiction over that property.” (at 411)

FACTUAL BACKGROUND

Elmer and Nelva Brunsting established the Brunsting Family Living Trust in 1996 and transferred assets to it. Their wills apparently contained pour-over provisions, and both spouses later died. Curtis, a beneficiary and sibling of the defendant co-trustees, alleged that the trustees misappropriated trust property, failed to provide trust-administration documents, and failed to provide an accurate and timely accounting. The trust assets at issue had generally been transferred to the inter vivos trust before the settlors' deaths.

PROCEDURAL HISTORY

Curtis sued the co-trustees of an inter vivos trust, alleging breach of fiduciary duty and related claims and seeking damages, injunctive relief, an accounting, and production of trust records. The district court denied interim relief and then sua sponte dismissed the action for lack of subject-matter jurisdiction, concluding that the probate exception applied. The Fifth Circuit reviewed the dismissal de novo, reversed, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings because the district court erred in dismissing the action for lack of subject-matter jurisdiction.

CASES CITED

- Vickie Lynn Marshall v. E. Pierce Marshall, Marshall v. Marshall, 547 U.S. 293 (2006)
- Markham, Alien Property Custodian, v. Allen et al., Markham v. Allen, 326 U.S. 490, 494 (1946)
- Borden v. Allstate Insurance Co., 589 F.3d 168, 170 (5th Cir. 2009)