

CLERK OF THE COURT
TABATHA FERGUSON
BOSQUE COUNTY CLERK
MERIDIAN, TEXAS

ATTORNEY FILING
RICHARD A. CUCCIS, II
108 E. CHAMBERS STREET
CLEBURNE, TEXAS 76031

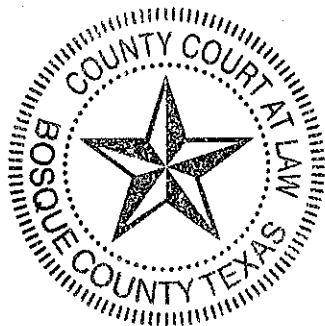
THE STATE OF TEXAS

TO ALL PERSONS INTERESTED IN THE ESTATE OF **DANIEL JOSEPH HEMEN**, deceased, Docket No. **P08471** County Court at Law Bosque County, Texas, **BETTY HEMEN**, filed in the County Court at Law of Bosque County, Texas, on the **25th day of MAY, 2022** an **PLAINTIFF'S CONTEST OF WILL DATED JANUARY 10, 2022**. Said application will be heard and acted on by said Court **no earlier than 10:00 am on the first Monday** next after the expiration of ten days, from the date of posting this citation, the same being the **06th DAY OF JUNE, 2022** at the County Courthouse in **MERIDIAN, TEXAS**.

All persons interested in said estate are hereby cited to appear before said Honorable Court at said above mentioned time and place by filing a written answer contesting such application should they desire to do so.

The officer executing this citation shall post the copy of the citation at the Courthouse Door of the county in which proceedings are pending, or at the place in or near said Courthouse where public notices customarily are posted, for not less than 10 days before the return day thereof, exclusive of the date of posting and return the original copy of this citation to the Clerk stating in a written return thereon the time when and the place where he posted such copy.

GIVEN UNDER MY HAND AND THE SEAL OF SAID COURT in Meridian, Texas. This the **25th day of MAY, 2022**.



Tabatha Ferguson

TABATHA FERGUSON
Bosque County Clerk

Melissa Crabb

Deputy

OFFICER'S RETURN ON CITATION

Came to hand on the 25 day of May, 2022, at
11:38 o'clock A M. and executed on the 25 day of May, 2022
by posting a copy of the within citation for ten days, exclusive of the day of posting,
before the return day hereof, at the County Courthouse door of Bosque County,
Texas, or at the place in or near the said courthouse where public notices customarily are
posted, that is from 5/25, 2022, through 6/6,
2022, inclusive.


CONSTABLE
BOSQUE COUNTY, TEXAS

Printed name: Scott Ferguson

CAUSE NO. P08471

IN THE ESTATE OF	§	IN THE COUNTY COURT
DANIEL JOSEPH HEMEN,	§	AT LAW
DECEASED	§	JOHNSON COUNTY, TEXAS

PLAINTIFF'S CONTEST OF WILL DATED JANUARY 10, 2022

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Betty Hemen, hereinafter called Plaintiff, complaining of and about the Application to Probate the will of Estate of Daniel Joseph Hemen and For Issuance of Letters Testamentary, hereinafter called Application, filed in this court on May 6, 2022, accompanied by the instrument purporting to be the Will of Estate of Daniel Joseph Hemen, hereinafter called Decedent.

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, Betty Hemen, is an individual whose address is 353 CR 1700, Clifton, Texas 76634. The last three numbers of Betty Hemen's driver's license number are 884. The last three numbers of Betty Hemen's social security number are 257.

3. Applicant Lorraine Fisk, an individual who is a resident of Texas, is the Applicant who seeks to probate the purported Last Will and Testament of Daniel Joseph Hemen dated January 10, 2022, under Cause Number P08471, pending in the County Court at Law, Bosque County, styled *In the Estate of Daniel Joseph Hemen, Deceased*. She may be served with process through her attorney of record, Mark S. Knapp, or at her home at the following address: 357 CR 1700, Clifton, Texas 76634.

OBJECTION TO ASSOCIATE JUDGE

4. Plaintiff objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

JURISDICTION AND VENUE

5. This Court has jurisdiction and venue because Decedent was domiciled in Texas and had a fixed place of residence in Bosque County on the date of death.

FACTS

6. Plaintiff Betty Hemen is the surviving spouse of Decedent, Daniel Joseph Hemen. They married on January 21, 1994. Plaintiff and Applicant co-own, as joint tenants and through community property, various pieces of real property, and personal property, and owned and operated various businesses together. On September 18, 2020, Plaintiff and Decedent entered into reciprocating Wills whereby Decedent and Plaintiff, for personal reasons, disinherited Decedent's biological daughter, Heather Theiss, with the remainder of the deceased's estate pouring into a trust created and dated September 18, 2020, with the sole initial beneficiary under September 18, 2020, being the survivor of the two.

7. Applicant, Lorraine Fisk, was an employee of Tall Timber House, LLC, sponsored for citizenship by Plaintiff and Decedent in 2017.

8. From mid-2019 to the date of his death, and during all relevant time periods, specifically, and most significantly, from approximately January 1, 2022, through his date of death, Decedent was directly under the influence of Lorraine Fisk and her spouse.

9. Decedent was admitted to the hospital on the evening of February 11, 2022. He transferred to a rehabilitation center on February 21, 2022. On February 22, 2022, the rehabilitation center advised Plaintiff, when she arrived at the center to visit her husband

and take his clothes, that they were unaware that Decedent had a wife, and that Applicant had been named as the Decedent's medical and statutory power of attorney. Thereafter, Applicant utilized the power of attorney to exclude Plaintiff from her husband's financial and medical decisions, to sell and transfer interest in personal property jointly owned by Plaintiff and Decedent as well as assets of shared interest in businesses and prevent financial account access by Plaintiff.

9. The Decedent died on May 5, 2022. Plaintiff received no notification of her husband's death from Applicant, who had utilized her power of attorney to prevent access to information by Applicant. David Hemen, Decedent's brother, finally advised Plaintiff that as the surviving spouse she needed to sign the forms for her husband's cremation. Plaintiff reached out to aCremation, who forwarded her a copy of the documents submitted by Applicant. Applicant lied to aCremation services by submitting cremation forms as Decedent's closest kin by naming herself as Decedent's daughter, listing herself as the main point of contact, and utilizing her address instead of Decedent's address to remove Plaintiff from the process. See attached "A," which is an aCremation.com form received by Plaintiff by aCremation. The instrument purporting to be the Will of the Decedent was not yet admitted to probate but is set for hearing at 9:00 AM on May 26, 2022.

10. On May 11, 2022 or thereafter, Plaintiff discovered that in addition to the power of attorney Applicant coerced Applicant to sign, Applicant had also coerced, induced, and influenced Decedent by deception, fraud, and misinformation to enter into a new Will dated January 10, 2022, which Applicant has presented to this Court in order to seek to probate as Decedent's Last Will & Testament on May 26, 2022, at 9 AM.

WILL INVALID

11. Plaintiff in good faith believes and alleges the following: The instrument purporting to be the Will of the decedent filed with the Application is not a lawful and valid will of the Decedent and should not be admitted to probate due to the following:

12. At the time the instrument purporting to be the Will of Decedent was executed, Decedent lacked the testamentary capacity for executing a will as required by Texas Estate Code Section 251.001, in that Decedent lacked the ability to know and understand the effect of the act of making a will; and lacked the ability to collect in the Decedent's mind the elements of business to be transacted in executing the will and hold them long enough to perceive their obvious relation to each other and to form a reasonable judgment about them.

13. The Decedent executed the instrument purporting to be the Will of Decedent due to the undue influence exerted over the Decedent at the time of execution. Such undue influence was effectively operated as to subvert or overpower the Decedent's mind at the time of the execution of that instrument. Decedent would not have executed that instrument but for such undue influence.

14. The instrument purporting to be the Will of the Decedent was executed due to fraud. The Decedent did not understand the contents of the instrument and executed the instrument due to deception or misrepresentation. The Decedent was induced by lies and false statements or representations made by Applicant to Decedent to influence his decision-making process.

LOST WILL

15. Plaintiff seeks to probate a copy of Decedent's Last Will & Testament dated September 18, 2020, which Plaintiff believes was left in the care, custody, and control, of

counsel for Applicant, Mark S. Knapp, along with the corporate books and documents of Tall Timber House, LLC and Tall Timber House, Inc.

INTESTATE HEIRS

16. The following are the heirs of the Decedent who would inherit under intestacy succession:

Applicant, Betty Hemen
Heather Theiss

Surviving Spouse of Decedent
Child of Decedent

EXEMPLARY DAMAGES

17. Plaintiff would further show that the acts and omissions of Applicant complained of herein were committed willfully, maliciously, fraudulently, or by duress, gross negligence, or other tortious means to intentionally prevent others from receiving an inheritance or gift that would otherwise have been received from the estate of the Decedent. To punish said Applicant for such outrageous behavior and malicious, fraudulent, or other culpable conduct, and to deter such actions and/or omissions in the future, Plaintiff also seeks recovery from Applicant for exemplary damages as provided by Section 41.003 of the Texas Civil Practice and Remedies Code.

ATTORNEYS' FEES

18. Request is made for all costs and reasonable and necessary attorneys' fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just and as provided by Section 352.052 of the Texas Estates Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Applicant be cited to appear and answer herein, and that upon a final hearing of the cause,

judgment be entered denying admission of the 2022 instrument purporting to be the Will of the Decedent proffered by Applicant to probate; denying the application for issuance of Letters Testamentary for the instrument proffered by Applicant; overruling and setting aside any order admitting the instrument proffered by Applicant to probate and any order granting the issuance of Letters Testamentary for the instrument proffered by Applicant; declaring the instrument purporting to be the Will of the Decedent complained of herein invalid; awarding exemplary damages against the Applicant; granting other relief listed in this petition; awarding costs and attorney's fees to Plaintiff; and granting any such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted by,

**CUCCIA WILSON, PLLC, d/b/a
THE ROGERS LAW FIRM**

108 E. Chambers Street
Cleburne, TX 76031

Tel: 817/558-4323 / Fax: 817/549-9777

/s/ Richard A. Cuccia, II

Michael S. Wilson SBN: 24008285

Email: mwilson@cucciawilson.com

Richard A. Cuccia, II SBN: 50511752

Email: rcuccia@cucciawilson.com

Daren Van Slyke SBN:24063043

Email: daren@michaeljrogers.com

Attorneys for Plaintiff, Betty Hemen

CERTIFICATE OF SERVICE

A copy of the foregoing was served on all parties and counsel of record on May 25, 2022, electronically using the electronic notification system.

/s/ Richard A. Cuccia, II

Richard A. Cuccia, II


VERIFICATION

STATE OF TEXAS

§
§
§

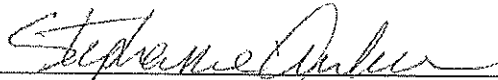
COUNTY OF JOHNSON

BEFORE ME, the undersigned authority, personally appeared Betty Hemen, who, on oath, stated that the statements made in the foregoing Petition - Will Contest are true and correct.



Betty Hemen

SUBSCRIBED AND SWORN TO BEFORE ME on this the 24th day of May, 2022, to certify which witness my hand and seal of office.



Notary Public, State of Texas

