Dismissed and Memorandum Opinion filed April 29, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-00047-CV

ROMANA LUVIANO AND ROXANA SANCHEZ, Appellants

V.

CATALINA LUVIANO, Appellee

On Appeal from the Probate Court No. 4
Harris County, Texas
Trial Court Cause No. 377,546

MEMORANDUM OPINION

This is an attempted appeal from an order signed December 2, 2009. The clerk's record was filed on February 12, 2010.

In 2007, Ranferi Luviano died in an explosion. On July 7, 2007, his widow, Catalina Luviano, sued Nunn Constructors, Ltd., Nunn Protective Coatings, Aqua Services, L.L.P., and Montgomery County Utility District #2 for wrongful death. Later, AEI Engineering was added as a defendant. Catalina filed suit on her own behalf and on behalf of Ranferi's five minor children. On March 25, 2008, appellants, Romana Luviano

and Roxana Sanchez, filed applications to determine heirship, claiming to be Ranferi's daughters from a prior relationship. On June 15, 2009, Catalina and the children settled their lawsuit with AEI Engineering.

On December 2, 2009, the trial court signed an order granting Catalina's motion to approve the settlement agreement with AEI. Appellants moved to sever the order from the remainder of the estate, but the trial court denied their motion. Appellants are attempting to appeal the December 2, 2009 order.

Generally, appeals may be taken only from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Whether the appellate court has jurisdiction over this interlocutory appeal depends on several factors. Probate proceedings give rise to a recognized exception to the general rule that only final judgments are appealable because multiple judgments may be rendered on discrete issues before the entire probate proceeding is concluded. *See Brittingham-Sada de Ayala*, 193 S.W.3d 575, 578 (Tex. 2006). However, not all probate orders are appealable. *Id.* Determining whether attributes of finality exist sufficient to confer appellate jurisdiction over an order arising from a probate proceeding, depends on whether the order resulted from the adjudication of a substantial right or disposed of all issues in a particular phase of the proceeding. *Id.* The supreme court has adopted the following standard to determine whether an order in a probate matter is appealable:

> If there is an express statute, such as the one for the complete heirship judgment, declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

Crowson v. Wakeham, 897 S.W.2d 779, 783 (Tex.1995).

In this case, there is no relevant rule or statute that makes an order approving a settlement agreement final and appealable. The order approving the settlement agreement with AEI Engineering is not an appealable "final order" under section 5(g) of the Probate

Code because the order does not dispose of all of the parties to the underlying suit. *See Logan v. McDaniel*, 21 S.W.3d 683, 688 (Tex. App.—Austin 2000, pet. denied) ("[B]arring a statute making an order in a particular phase of a probate proceeding final, the supreme court has cautioned that if pleadings in that phase raise other issues or parties that are not disposed of, the order is interlocutory."). Further, the record reflects that the estate is not closed so the probate proceeding is not final. Finally, the trial court denied appellants' motion for severance.

On April 5, 2010, notification was transmitted to the parties of this court's intention to dismiss the appeal for want of jurisdiction unless on or before April 15, 2010, appellants filed a response demonstrating grounds for continuing the appeal. *See* Tex. R. App. P. 42.3(a). Appellants filed no response.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Panel consists of Justices Frost, Seymore, and Boyce.