Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-22-00678-CV

In the **MATTER OF** the **ESTATE OF** Gloria Marie **SHRIVER**, Deceased

From the County Court, Jim Wells County, Texas
Trial Court No. 13-07502-PR
Honorable Michael Ventura Garcia, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Irene Rios, Justice
Beth Watkins, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: April 24, 2024

AFFIRMED

Appellants Joam Velez and Daniel Schulze appeal the trial court's order granting the plea to the jurisdiction and dismissing their amended application for appointment of a personal representative in their grandmother's estate. In their sole issue, Velez and Schulze argue the trial court erred when it determined it did not have jurisdiction to appoint a personal representative under section 257.151 of the Texas Estates Code. The principal question in this appeal is whether section 257.151 retroactively applies to an estate where the decedent died, and the will was admitted as a muniment of title, prior to the statute's codification. We determine it does not and affirm the trial court's order granting the plea to the jurisdiction.

BACKGROUND

The decedent Gloria Marie Shriver died on April 9, 2011. Shriver's will and codicil[1] left her jewelry to Velez and left the residue of her estate equally to her son, Ernest Lee Hoelscher, and her four grandchildren, including Velez and Schulze.[2] Shriver's estate included real property, farm equipment, a vehicle, gold coins, jewelry, and personal property.

On March 5, 2013, Hoelscher filed an application to probate Shriver's will as a muniment of title. The trial court granted the application and admitted the will as a muniment of title on May 8, 2013.

On January 15, 2015, Velez filed an "Application for Issuance of Letters Testamentary" alleging Hoelscher refused to provide Velez with a copy of Shriver's will, and Hoelscher suggested to Velez there was no need to probate the will. Velez further alleged Hoelscher made "vague oral representations" that he could distribute $14,000 a year to each beneficiary to help the beneficiaries "avoid income tax problems[,]" he wanted to avoid filing an inventory with the trial court, Shriver's will was "not really fair to everyone," and he intended to equally divide Shriver's jewelry among the beneficiaries. The trial court never ruled on the application for issuance of letters testamentary.

On May 7, 2015, Velez filed a bill of review—pursuant to section 55.251 of the Texas Estates Code[3]—requesting the trial court set aside the order admitting Shriver's will as a muniment of title and open administration of the estate. In the bill of review, Velez asserted the same

[1] When referring to the will in this opinion, we are referring to the will and codicil collectively unless otherwise noted.
[2] One of the grandchildren predeceased Shriver. In her codicil, Shriver left the predeceased grandchild's inheritance to her son, Ernest Lee Hoelscher, "to be used, at his sole discretion, for the benefit of any surviving family member or their descendants." Another grandchild's inheritance was to be held in trust by Hoelscher. Shriver's will also bequeathed the first $50,000 of Velez's inheritance to Velez's son.
[3] Section 55.251 of the Texas Estates Code provides "[a]n interested person may, by bill of review filed in the court in which the probate proceedings were held, have an order or judgment rendered by the court revised and corrected on a showing of error in the order or judgment" and that the bill of review must be filed within two years of the date of the order or judgment the interested person seeks to correct. TEX. EST. CODE ANN. § 55.251.

allegations in her application for issuance of letters testamentary. At the bill of review hearing, Velez testified when she asked about her grandmother's will, Hoelscher would "change[] the subject." Velez further testified she hired her attorney in December 2014 to check on the need to probate the estate. Shortly thereafter, Velez saw a copy of the will for the first time and discovered that Hoelscher had probated the will as a muniment of title. Hoelscher conceded at the hearing that he still retains control over most of the estate assets. Velez testified she has not received any estate assets, despite the hearing taking place two years after the order admitting the will as a muniment of title. The trial court denied the bill of review and Velez did not appeal that ruling.

In 2019, the legislature codified section 257.151 of the Texas Estates Code, which provides that a court order admitting a will to probate as a muniment of title does not preclude the subsequent appointment of a personal representative and opening of an administration of the testator's estate if the application is filed within four years of the testator's death or the administration of the testator's estate is necessary to receive or recover property due to the estate.[4] *See* TEX. EST. CODE ANN. §§ 257.151; 301.002(b)(1). On October 4, 2019, Velez filed an "Amended Application for Issuance of Letters Testamentary and Joam Velez and Daniel Schulze's Intervention." In the amended application, Velez and Schulze alleged Hoelscher was hiding estate assets and refusing to distribute the estate assets to the beneficiaries of the will. Citing the newly enacted section 257.151, Velez requested the trial court open the estate and issue letters testamentary so that the property due to the estate can be recovered from Hoelscher and distributed to the beneficiaries in accordance with Shriver's will.[5]

[4] The estate can also be opened to prevent real property in the testator's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant is a home-rule municipality that is a creditor of the estate. *See* TEX. EST. CODE ANN. §§ 257.151(2); 301.002(b)(2). However, this provision is not applicable to this appeal.

[5] The intervention also asserted other causes of action; however, we do not address them here because they are not relevant to the disposition of this appeal. *See* TEX. R. APP. P. 47.1.

In response, Hoelscher filed a plea to the jurisdiction asserting the application was time-barred because the trial court's plenary power to modify the muniment of title order and the time to file a bill of review had expired, res judicata precludes subsequent administration of the estate after the trial court denied Velez's bill of review, and section 257.151 cannot be applied retroactively to permit the trial court to open an estate where plenary power expired before the statute's enactment.[6] After a hearing, the trial court granted the plea to the jurisdiction, denying Velez and Schulze's request for appointment of a personal representative. Velez and Schulze appeal.

STANDARD OF REVIEW

"A plea to the jurisdiction may challenge the subject matter jurisdiction of the court." *In re Est. of Blankenship*, No. 04-08-00043-CV, 2009 WL 1232325, at *2 (Tex. App.—San Antonio May 6, 2009, pet. denied) (mem. op.) (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004)). Whether a trial court has subject matter jurisdiction is a question of law we review de novo. *Est. of Burns*, 619 S.W.3d 747, 750 (Tex. App.—San Antonio 2020, pet. denied). "If the plea challenges the pleadings, we determine if the pleader has affirmatively demonstrated the court's jurisdiction to hear the case." *Est. of Blankenship*, 2009 WL 1232325, at *2 (citing *Miranda*, 133 S.W.3d at 227).

DISCUSSION

Section 257.151 of the Texas Estates Code provides:

> A court order admitting a will to probate as a muniment of title under this chapter does not preclude the subsequent appointment of a personal representative and opening of an administration for the testator's estate if:

[6] Velez filed a motion for partial summary judgment seeking a ruling that the finality of the muniment of title order does not preclude subsequent administration of the estate. Hoelscher's last two arguments were asserted in response to the summary judgment motion and were also asserted at the plea to the jurisdiction hearing.

> (1) an application [for letters testamentary or of administration] is filed not later than the fourth anniversary of the testator's death; or
>
> (2) the administration of the testator's estate is necessary [to receive or recover property due to a decedent's estate . . . .]

TEX. EST. CODE ANN § 257.151; *see also* TEX. EST. CODE ANN. § 301.002(b)(1).

In their sole issue, Velez and Schulze argue the trial court erred when it granted the plea to the jurisdiction and dismissed their amended application for issuance of letters testamentary. Specifically, Velez and Schulze contend section 257.151 of the Texas Estates Code applies retroactively and allows the trial court to open the estate and issue letters testamentary notwithstanding the earlier order admitting the will as a muniment of title. Velez and Schulze argue they may avail themselves of section 257.151 because: (1) the amended application for issuance of letters testamentary relates back to the original application filed by Velez on January 15, 2015, a date within four years of Shriver's death; and (2) administration of the estate is necessary to receive or recover property due to the estate. The dispositive issue in this appeal is whether section 257.151 may be used to open administration of an estate where the decedent died, and the will was admitted as a muniment of title, before the effective date of section 257.151. Because we conclude section 257.151 does not apply retroactively, we need not address whether Velez and Schulze's amended application relates back to the original application or whether administration is necessary to receive or recover property due to the estate.

"The statutes in force at the time of death govern the disposition of the decedent's estate." *Dickson v. Simpson*, 807 S.W.2d 726, 727 (Tex. 1991); *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 507 n.23 (Tex. 2010) (holding a statute codified after the decedent died did not operate to give the probate court jurisdiction to hear appellee's heirship claim); *see also In re Est. of Chavana*, 993 S.W.2d 311, 314 (Tex. App.—San Antonio 1999, no pet.) ("Generally, the statutory language in effect at the time of the death of the decedent governs the disposition of the

estate."); *Lockhart v. Chisos Mins., LLC*, 621 S.W.3d 89, 101 (Tex. App.—El Paso 2021, pet. denied) (applying statutes that were in effect twenty years earlier when the decedent died); *Estrada v. Cheshire*, 470 S.W.3d 109, 121 n.4 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

Further, "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." TEX. GOV'T CODE ANN. § 311.022. It is generally disfavored to interpret statutes as having retrospective effect; however, statutes may operate retrospectively when that is the apparent intent of the legislature, provided the retrospective application does not impair vested rights. *Deacon v. City of Euless*, 405 S.W.2d 59, 61 (Tex. 1966) (holding the legislature intended to apply statute retrospectively when it provided the statute would be applicable to proceedings pending on the effective date of the act); *see also Hous. Indep. Sch. Dist. v. Hous. Chronicle Publ'g Co.*, 798 S.W.2d 580, 585 (Tex. App.—Houston [1st Dist.] 1990, writ denied) ("Doubts as to retroactivity are resolved against the retroactive application of a statute."). "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 139 (Tex. 2010) (alteration omitted) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994)). "In other words, the rules should not change after the game has been played." *Robinson*, 335 S.W.3d at 139.

The default rule is that an estate is governed by the law in place at the time of the decedent's death. *See Fernandez*, 315 S.W.3d at 507 n.23. Here, Shriver died in 2011. Section 257.151 of the Texas Estates Code was not codified until September 1, 2019. Absent an express provision that the statute is to operate retrospectively, we presume it only operates prospectively. *See* TEX. GOV'T CODE ANN. § 311.022. Nothing in section 257.151 or the act codifying the statute (the "Act") states it applies retrospectively. *See* TEX. EST. CODE ANN. § 257.151; Act of June 14, 2019, 86th Leg., R.S., ch. 1141, §§ 16, 48, 49, 2019 Tex. Gen. Laws 3233, 3238, 3246–47; *see also*

Chaney v. Camacho, No. 04-12-00358-CV, 2013 WL 6533123, at *4 (Tex. App.—San Antonio Dec. 11, 2013, pet. denied) (mem. op.) ("Because there is no provision in the statute for retroactive application, it can only be applied prospectively.").

While the Act provides that other statutes added by the Act will have retrospective application, the Act does not provide retrospective application of section 257.151.[7] Act of June 14, 2019, 86th Leg., R.S., ch. 1141, § 48(a), 2019 Tex. Gen. Laws 3233, 3246–47. For example, subsection 48(a) of the Act provides that "Subchapter C, Chapter 111, Estates Code, as added by this Act, applies to an agreement, account, contract, or designation made or entered into before, on, or after the effective date of this Act, regardless of the date of the deceased party's death." *Id.* However, there is no similar provision providing retrospective application of section 257.151 of the Texas Estates Code. *Id.* Regarding section 257.151, the Act generally states: "This Act takes effect September 1, 2019" and is otherwise silent as to whether the statute is retrospective or prospective. Act of June 14, 2019, 86th Leg., R.S., ch. 1141, § 49, 2019 Tex. Gen. Laws 3233, 3247. Because the legislature did not expressly provide that section 257.151 is retrospective, we must presume the statute applies prospectively, and we fall back on the default rule that Shriver's estate is governed by the law as it existed at the time of her death in 2011.

In 2013, the trial court rendered an order admitting the will as a muniment of title. The trial court's plenary power expired thirty days later. *See In re Jacky*, 506 S.W.3d 550, 555 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (holding a trial court's order admitting a will to probate as a muniment of title is the functional equivalent of a final judgment and the trial court's plenary

[7] The act also provides savings clauses for other statutes that were amended; however, section 257.151 was added by the Act and not simply amended. Act of June 14, 2019, 86th Leg., R.S., ch. 1141, § 48, 2019 Tex. Gen. Laws 3233, 3246–47; *see also City of Houston v. Hous. Firefighters' Relief & Ret. Fund*, 196 S.W.3d 271, 283 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (alteration omitted) ("A savings clause is a clause providing that a former law is continued in effect for certain purposes.").

power expires thirty days after the order is signed). At this point, Velez and Schulze's only remedy was to file a bill of review under section 55.251 of the Texas Estates Code, which Velez did. *See* TEX. EST. CODE ANN. § 55.251. However, the trial court denied the bill of review, and Velez did not appeal that order. Therefore, finality attached to the trial court's decision to admit the will as a muniment of title. *See Logan v. McDaniel*, 21 S.W.3d 683, 687–89 (Tex. App.—Austin 2000, pet. denied) (holding finality attaches to a final, appealable order in probate proceedings and, under the doctrine of collateral estoppel, the issue is precluded from being relitigated). Because section 257.151 does not retroactively apply to open an estate where the decedent died—and finality to the muniment of title order attached prior to the statute's effective date—collateral estoppel precludes Velez from rehashing her complaints years later. *See id.*; *see also Berry v. Berry*, 786 S.W.2d 672, 673 (Tex. 1990) (holding res judicata protects a final, unappealed judgment from collateral attack even though a subsequently passed statute makes the judgment voidable).

Accordingly, Velez and Schulze's sole issue is overruled.

CONCLUSION

We affirm the trial court's order granting the plea to the jurisdiction.

Irene Rios, Justice