



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-17-00108-CV

ESTATE OF JOHN DAVID HARRIS,
DECEASED

FROM PROBATE COURT NO. 2 OF TARRANT COUNTY
TRIAL COURT NO. 2011-PR00903-1-2

MEMORANDUM OPINION¹

Pro se Appellant David Glen Harris attempts to appeal from two orders entered by the trial court in this probate proceeding. Because we conclude that neither order is final for purposes of appeal, we dismiss this appeal for want of jurisdiction.

¹See Tex. R. App. P. 47.4.

I. BACKGROUND

On August 31, 2016, the probate court, sua sponte, signed an order appointing an attorney ad litem to represent any “unknown heirs, missing heirs, unborn or unascertained heirs, heirs with legal disability, minor heirs and/or incapacitated heirs” (Appointment Order). See Tex. Est. Code Ann. §§ 53.104, 202.009 (West 2014). In that order, the trial court stated as follows:

Pursuant to Section 37.004(c) of the Government Code, the following named attorney is **not** the next name on the list of attorneys ad litem maintained by the Court pursuant to Section 37.003 of the Government Code and is being appointed out of order for the following reason(s): specialized skill in subject matter.

Section 37.004(c) of the government code provides,

The court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, or guardian is agreed on by the parties and approved by the court.

Tex. Gov’t Code Ann. § 37.004(c) (West Supp. 2016).² On October 17, 2016, Harris objected to the Appointment Order, alleging that the trial court failed to

²We note an apparent typographical error in the Appointment Order. Rather than appointing the attorney ad litem under section 37.004(c) as recited in the Appointment Order, it appears that the trial court instead appointed the attorney ad litem in this proceeding under section 37.004(d)(1), which provides,

On finding good cause, the court may appoint a person included on the applicable list whose name does not appear first on the list, or a person who meets statutory or other requirements to serve on the case and who is not included on the list, if the appointment of that person as attorney ad litem, guardian ad litem, mediator, or guardian is required on a complex matter because the person possesses

follow section 37.004(c) because the parties had not agreed to the appointment of an attorney ad litem whose name did not appear first on the applicable list maintained by the trial court. On February 24, 2017, the trial court signed an order overruling Harris's objections (Objections Order). Additionally, the court-appointed attorney ad litem filed a request to be paid hourly, which the trial court granted on March 6, 2017 (Fee Order). On March 16, 2017, Harris filed a notice of appeal in which he indicated his intent to appeal from the Objections Order and the Fee Order.

On April 3, 2017, we notified Harris of our concern that we lack jurisdiction over this appeal for two reasons. First, we indicated our concern that we lack jurisdiction over an appeal from the Appointment Order due to an untimely notice of appeal. Second, we stated our concern that we lack jurisdiction over an appeal from the Fee Order because it did not appear to be a final judgment or appealable interlocutory order. We informed Harris that unless he or any party desiring to continue the appeal filed a response by April 13, 2017, showing grounds for continuing the appeal, we would dismiss this appeal for want of jurisdiction.

In his response, Harris maintained that his notice of appeal was timely. He stated that "if read correctly," his notice of appeal did not state his intent to

relevant specialized education, training, certification, skill, language proficiency, or knowledge of the subject matter of the case.

Tex. Gov't Code Ann. § 37.004(d)(1) (West Supp. 2016).

appeal from the trial court's August 31, 2016 Appointment Order. Rather, his notice of appeal stated his intent to appeal from the trial court's February 24, 2017 Objections Order and March 6, 2017 Fee Order. Because he sent his notice of appeal from those orders on March 10, 2017,³ Harris stated that the notice was timely. Harris also stated two additional, interrelated reasons why he believes this court has jurisdiction over his appeal from the trial court's Objections Order. He maintains that because (1) the Objections Order is a final, appealable order and (2) he is contesting the probate court's jurisdiction to enter that order, he believes this court has jurisdiction over this appeal.

II. DISCUSSION

Generally, appeals may be taken only from final judgments or interlocutory orders that are authorized by statute. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195, 200 (Tex. 2001). A judgment or order is final if it disposes of every pending claim and party. *Id.* at 205. Probate proceedings are an exception to the one-final-judgment rule because they may involve multiple orders on discrete issues, each of which may be final for purposes of appeal. *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (op. on reh'g). However, not all interlocutory probate orders are appealable. *Id.* The supreme court has stated that the appropriate test for determining whether a probate order is final for purposes of appeal is as follows:

³As Harris is an inmate, he mailed his notice of appeal to the trial court, which filed it on March 16, 2017.

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.

Id. (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)). In other words, where no statute expressly provides that a particular probate order is final and appealable, such an order is interlocutory and not subject to immediate appeal unless it disposes of all parties or issues in a particular phase of the proceedings. See *id.* at 579; *Estate of Rodriguez*, No. 14-16-00507-CV, 2017 WL 61840, at *1 (Tex. App.—Houston [14th Dist.] Jan. 5, 2017, no pet.) (mem. op.). No statute expressly authorizes an immediate appeal from either the Objections Order or the Fee Order. Additionally, neither the Objections Order nor the Fee Order disposes of all parties or issues in a particular phase of this probate proceeding. Thus, we conclude that these orders are not final, appealable probate orders. See *De Ayala*, 193 S.W.3d at 578–79; *Estate of Rodriguez*, 2017 WL 61840, at *1. Accordingly, we dismiss this appeal for want of jurisdiction. See Tex. R. App. P. 42.3(a), 43.2(f).

PER CURIAM

PANEL: GABRIEL, SUDDERTH, and KERR, JJ.

DELIVERED: June 15, 2017