



NUMBER 13-17-00555-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI-EDINBURG

ESTATE OF JANET AMANDA MAUPIN, DECEASED

**On appeal from Probate Court No. 1
of Travis County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Hinojosa, and Perkes
Memorandum Opinion by Justice Perkes**

Patrick Evan Maupin (Patrick) appeals the trial court's order admitting his wife's will to probate as a muniment of title. See TEX. EST. CODE ANN. § 31.001. Patrick argues that the trial court erred when it enforced a local rule prohibiting individuals acting pro se from administering estates and denied his pro se application for letters testamentary, instead issuing sua sponte a muniment of title. We affirm.¹

¹ Pursuant to a docket-equalization order issued by the Supreme Court of Texas, the appeal has been transferred to this Court from the Third Court of Appeals in Austin, Texas. See TEX. GOV'T CODE ANN. § 73.001.

I. BACKGROUND

Janet Amanda Maupin (Janet) died on June 22, 2017, at her home in Travis County, Texas. Janet left a self-proved will dated November 28, 1988. The will named Patrick as independent executor and sole beneficiary. On July 11, Patrick filed an application pro se to probate Janet's will and issue letters testamentary.

On August 7, the trial court held a hearing. Patrick appeared unrepresented and provided proof of Janet's death and residency in Travis County. When asked by the trial court why an administration was necessary, Patrick stated there were "a few assets" located out of state, "some balances on some accounts and credit cards and things," and "also a possible cause of action."

Pursuant to the Travis County Probate Court's pro se policy,² the court informed Patrick that he would need an attorney in order to apply for letters testamentary. In the interim, the trial court signed an order admitting the will to probate as a muniment of title sua sponte. The court decreed, in relevant part, as follows:

that all of the necessary proof required for the probate of such will has been made; that such Will is entitled to probate; that there are no unpaid debts owing by this Estate, exclusive of any debt secured by liens on real estate; that there is no necessity for administration of this estate

Patrick appealed.

² The Travis County Probate Court No. 1 observes a pro se policy whereby individuals representing the interests of third parties must be represented by a licensed attorney. This includes executors applying for letters testamentary and prohibits individuals acting pro se from administering estates. Specifically, the policy provides:

[A] pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates. See *In re Guetersloh*, 326 S.W.3d 737 (Tex. App.—Amarillo 2010, no pet.) and *Steele v. McDonald*, 202 S.W.3d 926 (Tex. App.—Waco 2006, no pet.), and the authorities cited. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney.

II. APPLICABLE LAW AND ANALYSIS

A trial court's ruling on a probate application is reviewed under an abuse of discretion standard. *In re Estate of Gaines*, 262 S.W.3d 50, 55 (Tex. App.—Houston [14th Dist.] 2008, no pet.). A trial court abuses its discretion when it acts arbitrarily, unreasonably, or without regard to guiding legal principles. *Elliott v. Weatherman*, 396 S.W.3d 224, 228 (Tex. App.—Austin 2013, no pet.). A trial court, however, does not abuse its discretion in complying with a local rule that has not been previously challenged or found to contradict the Texas Rules of Civil Procedure. See TEX. R. CIV. P. 3a(1); see also *Kenley v. Quintana Petroleum Corp.*, 931 S.W.2d 318, 320–21 (Tex. App.—San Antonio 1996, writ denied).

Generally, if an independent executor named in a will comes forward within the statutory period for probating a will, offers it for probate, and applies for letters testamentary, the court has no discretionary power to refuse to issue letters to the named executor unless he is otherwise disqualified under the provisions set out in the Texas Estates Code. See TEX. EST. CODE ANN. § 304.003; see also *Alford v. Alford*, 601 S.W.2d 408, 410 (Tex. App.—Houston [14th Dist.] 1980, no writ).

Appellant's primary contention on appeal is that the trial court abused its discretion when the court, in accordance with its local rules, denied his application for letters testamentary based on his pro se status. See TEX. EST. CODE ANN. § 257.001. Specifically, Patrick argues that the court's policy is invalid under Rule 3a(1)³ of the Texas Rules of Civil Procedure because it violates his right to self-representation under Rule 7. See TEX. R. CIV. P. 7; see also *Ex parte Shaffer*, 649 S.W.2d 300, 302 (Tex. 1983)

³ “[A]ny proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located.” TEX. R. CIV. P. 3a(1).

“Ordering a party to be represented by an attorney abridges that person’s right to be heard by himself.”).

However, our sister courts have established that Rule 7 only applies when a person is litigating his rights on his own behalf, as opposed to litigating certain rights in a representative capacity. See *Steele v. McDonald*, 202 S.W.3d 926, 928 (Tex. App.—Waco 2006, no pet.) (holding that a non-lawyer cannot appear pro se on behalf of an estate as an independent executor); see also *Kaminetzky v. Newman*, No. 01-10-01113-CV, 2011 WL 6938536, at *6 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, no pet.) (mem. op.). The law distinguishes between a person in his individual capacity and the same person in his representative or fiduciary capacity. See *McMahan v. Greenwood*, 108 S.W.3d 467, 487 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (providing that an executor is synonymous with administrator and legal representative); see generally *Elizondo v. Tex. Nat. Res. Conservation Comm’n*, 974 S.W.2d 928, 931 (Tex. App.—Austin 1998, no pet.) (addressing individual versus representative capacity in the context of standing). An executor of an estate serves in a representative capacity of the estate, thereby requiring an attorney to represent the interests of the third-party at the outset. See *Steele*, 202 S.W.3d at 928; *McMahan*, 108 S.W.3d at 487.

In compliance with the local rule and supported by precedence, the trial court was unable to determine Patrick’s suitability as an executor for his wife’s estate absent attorney representation. See *Elliott*, 396 S.W.3d at 228; *Steele*, 202 S.W.3d at 928; *Kenley*, 931 S.W.2d at 320–21. Therefore, we hold that the trial court did not abuse its discretion in denying Patrick’s pro se application. See *Elliott*, 396 S.W.3d at 228.

III. CONCLUSION

We affirm the trial court's order.

GREGORY T. PERKES
Justice

Delivered and filed the
25th day of July, 2019.