In the Missouri Court of Appeals
Eastern District

DIVISION TWO

IN THE MATTER OF: SHARREN K. SMITH,	)	No. ED105745
Appellant,	)	Appeal from the Circuit Court of St. Louis County
	)	Honorable Carolyn C. Whittington
	)	FILED: May 1, 2018

Casper Machino ("Appellant"), the conservator of the Estate of Sharren K. Smith ("Ms. Smith"), an incapacitated, disabled person, appeals from the trial court's order entered on June 12, 2017, which denied Appellant's motion to vacate various interlocutory orders from the probate court: orders for waste of March 31, 2016, and March 31, 2017, as well as orders for attorney's fees of March 29, 2013, and March 31, 2017. We dismiss the appeal.

I. Background[1]

[1] Appellant's brief and Respondent's brief both fail to adequately cite to the record to support their factual assertions with citations to specific page numbers to the record and transcripts, and improperly recite a one-sided, incomplete recitation of facts. Rule 84.04(c).

> Rule 84.04 provides the requirements for appellate briefs . . . . Compliance with the briefing requirements of Rule 84.04 is mandatory, and a brief that fails to comply with Rule 84.04 preserves nothing for appellate review. Compliance with the rule is required in order that the appellant may give notice to the party opponent of the precise matters which must be contended with and answered. Compliance is also mandatory so that unnecessary burdens are not imposed on the appellate court and to ensure that appellate courts do not become advocates for the appellant by speculating facts and arguments that have not been made.

Appellant was appointed as conservator of the estate of Sharren K. Smith on October 19, 2010. He was removed by the probate court on March 31, 2016, for failing to correct annual settlements as required by law, and failing to correct his settlements after being notified of deficiencies, which was the trial court's stated grounds for removal. Show cause orders were issued to Appellant to provide an opportunity to rectify accounting prior to his removal.

During Appellant's time as conservator, the court entered an Order to Expend Funds for Support on September 24, 2012, at which time it explained the court's approach to Appellant's mileage reimbursements and the limitations imposed, and that Appellant received reimbursements for mileage and other expenses in excess of those authorized by the court. That order was vacated and set aside by the court's May 17, 2013 order regarding Appellant's authorized expenditures for support for Ms. Smith, including amounts for rent, groceries, utilities, medical and dental charges, clothing, laundry, and furniture and bedding allowances.

On March 13, 2013, the court granted, in part, Appellant's petition for extra mileage reimbursement filed on February 19, 2013, allowing an additional, one-time mileage reimbursement for medical necessity in the amount of $840, applied to a balance due to the estate in the amount of $3,485, for excess compensation received by Appellant during the first annual settlement period of administration, leaving a balance of $2,645.

Following Appellant's removal as conservator, the Public Administrator was appointed successor conservator for the estate. A Petition to Determine Liability was filed on April 15, 2016, against Appellant as the prior fiduciary, now removed, as well as the bonding company. The matter was submitted by agreement of the parties to the trial court for its summary determination pursuant to Section 473.207 (RSMo. 2000), based upon all of the settlements,

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Osthus v. Countrylane Woods II Homeowners Ass'n, 389 S.W.3d 712, 714-15 (Mo. App. E.D. 2012) (internal citations and quotations marks omitted).

amendments, vouchers, exhibits, records of the court, and argument of counsel, to which and at which time Appellant's counsel was present and consented, on August 25, 2016.

The allowance of attorney's fees has been the subject of three orders throughout Appellant's time as conservator: one on February 25, 2013; one on January 26, 2016, addressing reconsideration of the 2013 compensation order; and one on March 31, 2017. First, the February 2013 order granted, in part, Appellant's petition to allow $10,000 as reasonable compensation for services rendered to Appellant from August 20, 2010, to September 30, 2011; it was ordered reduced by payments of $6,000 already received by Appellant's attorney; the request for an additional allowance of fees of $2,210 for services related to family court proceedings relating to Ms. Smith's modification of maintenance would be reconsidered upon the family court's disposition; and denied all fees sought in the petition exceeding $12,210, namely $7,243.75.

Next, the January 26, 2016 order addressed, *inter alia*, the pending petitions seeking allowances of attorney's fees sought by Appellant and commented that "[t]he greatest difficulty that this court ha[d] experienced in the supervision of this estate ha[d] been the supervision of compensation to [Appellant] and his attorney." The court noted that the administration expenses furthered the personal interest of the fiduciary and his attorney without furthering the best interests of the ward-protectee, Ms. Smith. The court "thoroughly reviewed counsel's 29-page motion for reconsideration and [found] nothing in the motion that would alter disposition contained in its Order and Judgment of February 22." Although Appellant had argued that this estate involved greater financial complexity than is customarily encountered in the administration of a typical matter, the court found nothing in the record to indicate that the estate involved extraordinary financial complexity. The court also found many expenses were a direct result of the conservator engaging counsel for the purpose of performing his administrative duties despite the court's caution that the attorney's fees for services representing a conservator

must be fixed by order of the court. Denying Appellant's petitions for an allowance of attorney's fees, the court noted that the charges being sought for Appellant's attorney's fees represented 40 percent of the cash under administration and found no justification in the record of administration of the estate to make an exception for the excessive charges for expenses here.

Additionally, the March 31, 2017 Order on First Amended Petition for Attorney's Fees acknowledged that the court already discussed the application of legal principles to the case regarding attorney's fees, but it would do so again. The court found the time charges of administration were excessive in light of the condition of this estate and that Appellant's attorney and his paralegal were fully aware of the unauthorized nature of the expenditures and other administrative deficiencies that resulted in the removal of Appellant as conservator, but they actively participated in making those expenditures and failed to advise Appellant of the impropriety of them. The probate court ruled that Appellant's attorney should be allowed only the compensation he has already taken, $35,000 for his representation of Appellant in August 2010 through January 2016, "in full and complete satisfaction of his claim for fees for services rendered to [Appellant] in the administration of this estate and is entitled to nothing more."

On or about March 30, 2017, the probate court commissioner issued an Order Determining Liability of Defaulting Fiduciary and Judgment, which found liability, individually against Appellant and jointly against the surety in the amount of $34,210.34; the order was amended June 12, 2017, to modify the valuation of an automobile by stipulation of parties, pursuant to the trial court orders. That order of the trial court was conveyed for confirmation to the probate court judge, who remanded it to the commissioner to ultimately return and recommend a combined ruling and recommendation on it, and ultimately it was confirmed by the probate judge.

At the end of April 2017, Appellant filed his First Amended Petition for Reconsideration and Petition to Amend the judgments of March 31, 2016 and March 31, 2017, with respect to Appellant's removal as conservator and determination of his liability to this estate, as well as the judgments of March 31, 2016 and March 31, 2017, with respect to attorney's fees and petition for a new trial of all the orders and judgments rendered by the deputy commissioner in this matter. Initially, on May 4, 2017, the court ordered the deputy commissioner "to take up for consideration [Appellant's] First Amended Petition and to thereafter make recommendations to the court in the matter of issues raised by [Appellant] in his First Amended Petition." However, the Public Administrator filed a reply to Appellant's post-trial motions and on June 12, 2017, the court issued an Order Amending Judgment Determining Liability of Defaulting Fiduciary as to Automobile, which had been issued on March 30, 2017. The court further issued an Order and Judgment on First Amended Petition for Reconsideration, to Amend Court's Judgments Petition for New Trial and Motion for Clarification, addressing Appellant's April 26, 2017 filing that raised issues with the March 31, 2016; March 31, 2017; and March 29, 2013 orders regarding removal and conservator and determination of liability, attorney's fees, and Petition for New Trial. The trial court denied Appellant's request for evidentiary hearing and reconsideration of the aforementioned orders.

Appellant filed his notice of appeal on June 21, 2016. This appeal follows.

II. Discussion

Appellant alleges two multifarious points on appeal.[2] First, he contends the trial court erred as a violation of due process of law, in the following manner: (A) by compelling Appellant

[2] Both of Appellant's points are multifarious in that they complain of several perceived failings by the trial court with respect to its alleged errors. "Structuring a point relied on so that it groups together contentions not related to a single issue violates Rule 84.04." Martin v. Reed, 147 S.W.3d 860, 863 (Mo. App. S.D. 2004) (internal quotations and citations omitted). "Improper points relied on, including those that are multifarious, preserve nothing for appellate review." Id. (internal quotations and citations omitted). Despite the violation, we may choose to review a

to waive any possible conservator's compensation in the future if he wanted to be reimbursed for automobile expenses to visit Ms. Smith at the Sunshine Home, to which Appellant contends he was entitled anyway; (B) by refusing to grant hearings on the record about numerous matters, including a refusal to grant an evidentiary hearing on the grounds for the removal of the Appellant; (C) by refusing to specify the exact dollar amount for each element that constituted the damages for waste assessed against the Appellant; and (D) by unreasonably delaying decisions of the court for sometimes years when such decisions substantially impacted decisions that the Appellant was required to make on an ongoing basis.

In his second point, Appellant alleges the trial court erred in refusing to enter orders, the decisions for which were either against the weight of the evidence or without any credible, substantial evidence to support the order, in the following manner: (A) failure to approve a reimbursement to Appellant for his driving expenses for a second day each week he visited Ms. Smith at the Sunshine Home even after Ms. Smith's psychiatrist filed an affidavit with the court stating that Appellant's visits two times per week were therapeutic; (B) failure to ratify Ms. Smith's distributions to her two sons and requiring Appellant to reimburse the estate for these distributions when Appellant did not gain any benefit from the distributions, receiving no compensation for his services, which were almost 500 hours per year; (C) failure to accept vouchers for rent, utilities and food on the third, fourth, and fifth annual settlements when Appellant presented all of the vouchers for Ms. Smith's 50 percent share of rent and utilities and vouchered the food by presenting the court with statistics from the U.S. Department of Agriculture; and (D) the refusal of the court to order any conservator's compensation and to severely cut the requested attorney's fees was also, in the case of the conservator's fee, without

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multifarious point, or part of it, *ex gratia*. Matter of Wilma G. James Trust, 487 S.W.3d 37, 52 (Mo. App. S.D. 2016).

any substantial evidence; and in the case of the attorney's fees, beyond the weight of the evidence.

Even before reaching the merits of Appellant's appeal, this Court must first determine whether the appeal was timely filed under the appropriate statutory scheme and this Court's rules. Sanford v. CenturyTel of Missouri, LLC, 490 S.W.3d 717, 719 (Mo. banc 2016). Under Section 512.020, "[a]ny party to a suit aggrieved by any judgment of any trial court . . . may take his or her appeal to a court having appellate jurisdiction from any . . . [f]inal judgment in the case . . . ." "An appealable judgment resolves all issues in a case, leaving nothing for future determination." Gibson v. Brewer, 952 S.W.2d 239, 244 (Mo. banc 1997). Generally, "[a] final judgment is a prerequisite to appellate review." Ndegwa v. KSSO, LLC, 371 S.W.3d 798, 801 (Mo. banc 2012). "If the trial court's judgments are not final, this Court lacks jurisdiction and the appeal[] must be dismissed." Gibson, 952 S.W.2d at 244.

"'[A]ppeals are purely statutory, and must be taken within the time and in the manner provided by statute.'" In re Estate of Forhan, 149 S.W.3d 537, 541 (Mo. App. S.D. 2004) (quoting Lucitt v. Toohey's Estate, 89 S.W.2d 662, 664 (Mo. 1935)); Rule 81.01. "'Courts may not enlarge the statutory period within which an appeal may be taken . . . .'" Id. (quoting In re Interest of T.G., 455 S.W.2d 3, 9 (Mo. App. 1970).

Section 472.180 provides that "[a]ll appeals shall be taken within the time prescribed by the rules of civil procedure relating to appeals."[3] Section 472.210 of the Probate Code provides that, "[a]ppeals shall be taken in accordance with the rules of civil procedure relating to appeals." As such, Rule 81.04(a) provides:

[3] Prior to 1978 when Section 472.180 was amended to require that all appeals be taken "within the time prescribed by the rules of civil procedure relating to appeals," the rule had required appeals from interlocutory orders authorized by Section 472.160.1(1)-(13) to be taken within 30 days after the decision was made. Section 472.180 (RSMo. 1969). Thus, the appeal time ran from the entry of the order. Id.

> [w]hen an appeal is permitted by law from a trial court, a party may appeal from a judgment or order by filing with the clerk of the trial court a notice of appeal. No such appeal shall be effective unless the notice of appeal shall be filed not *later than ten days* after the judgment or order appealed from becomes final.

(Emphasis added).

Generally, orders of the probate court are interlocutory and are not subject to appeal until final disposition of the matters before the court. In re Estate of Couch, 920 S.W.2d 165, 168 (Mo. App. W.D. 1996); see Section 472.150.[4] However, if an order falls within the enumerated exceptions set forth in Section 472.160.1, it is deemed final for purposes of appeal, and any interested and aggrieved person has the right to appeal. In re Estate of Burg, 68 S.W.3d at 545; see State ex rel. Estate of Seiser v. Lasky, 565 S.W.2d 792, 794 (Mo. App. 1978).

In Kemp v. Balboa, 959 S.W.2d 116, 118 (Mo. App. E.D. 1997), this Court interpreted the rules regarding appeals from an interlocutory probate order such as this. The court held the requirement of Rule 74.01(a) that an appealable order must be delineated a "judgment" does not apply to every order in a probate proceeding subject to an appeal under Section 472.160:

> Section 472.160 . . . provides a long list of orders, many clearly interlocutory in nature, which may be appealed from a probate proceeding. *Many of them do not purport to be a final determination of the rights of the parties.* In most there is no confusion as to when the pronouncement is final for purposes of appeal. *The orders listed in that section are ready for appeal when made.*

(Emphasis added).

Section 472.160.1, sets out, in part pertinent to this appeal, that

> [a]ny interested person aggrieved thereby may appeal to the appropriate appellate court from the order, judgment or decree of the probate division of the circuit court in any of the following cases:

[4] Section 472.150 states in pertinent part:

> [f]or good cause, before the expiration of the period allowed for appeal after the order of final distribution of the administration of the estate . . . the court may vacate or modify its orders, judgments and decrees, or grant a rehearing therein, except that no such power shall exist as to any orders, judgments or decrees from which an appeal has been taken, prior to a final disposition thereof on such appeal, or to set aside the probate of a will after the time allowed for contest thereof. No vacation or modification under this section affects any act done or any right acquired in reliance on any such order, judgment or decree.

> . . .
> (7) On judgments for waste;
> . . .
> (10) On orders making allowances for the expenses of administration;
> . . .
> (14) In all other cases where there is a final order or judgment of the probate division of the circuit court under this code . . .

"Section 472.160 creates an expedited right to appeal certain probate orders which otherwise would be interlocutory and unappealable." Forhan, 149 S.W. 3d at 541. "Such expedited appeals serve the salutary purposes of allowing 'many matters of importance to be resolved while the estate is open, and prevents one complex appeal from all matters that occurred during the administration of the estate.'" Id. at 541-42 (quoting In re Estate of Erwin, 611 S.W.2d 564, 567 (Mo. App. 1981)). It follows that "[b]ecause an appeal from one of the orders listed in [Section] 472.160 is permitted while the estate is still open, such orders are immediately appealable upon entry." Id. at 542. While no provision in the rules of civil procedure specifies when an *order* is deemed final for purposes of appeal, Forhan, Burg and Kemp all hold that an interlocutory probate order, appealable pursuant to Section 472.160, is final upon entry. In re Estate of Standley, 204 S.W.3d 745, 750 (Mo. App. S.D. 2006) (en banc)(citing In re Estate of Forhan, 149 S.W.3d 537, 542 (Mo. App. S.D. 2004)); In re Estate of Burg, 68 S.W.3d 543, 544-45 (Mo. App. E.D. 2001); Kemp v. Balboa, 959 S.W.2d 116, 118 (Mo. App. E.D. 1997). "The orders listed in [Section] 472.160 are ready for appeal when made." Kemp v. Balboa, 959 S.W.2d 116, 118 (Mo. App. 1997).

The concurring opinion of Standley addresses the issue we face here, characterized as a "conceptual difficulty" presented by the application of Rule 81.05, setting forth the time within which an appeal may be taken from a final judgment, to an appeal from an interlocutory order and how the finality of such order could be "significantly delayed if an 'authorized after-trial

motion' is filed."[5] 204 S.W.3d 745, 751 (Mo. App. S.D. 2006) (Bates, J. concurring).[6] Whereas Rule 81.05's purpose "is to determine when a *judgment* becomes final," and the trial court has the opportunity to exercise its retained authority pursuant to Rule 75.01[7] to "vacate, reopen, correct, amend, or modify its judgment . . . ." within the typical 30 days before a judgment becomes final, the concurring opinion states that this jurisdictional limitation "should have no bearing on how one computes the time for filing a notice of appeal from an interlocutory probate order that is permissively appealable pursuant to Section 472.160.1(1)-(13) because no similar, automatic loss of jurisdiction takes place." Id. at 751. The court notes that the application of Rule 81.05 to an appeal from an interlocutory order "could permit the timely filing of a notice of appeal from an interlocutory, appealable probate order up to 120 days after its entry" and "find[s] that result

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[5] Rule 81.05 states:

> (a) Finality as Affected by After-Trial Motions. For the purpose of ascertaining the time within which an appeal may be taken:
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> (1) A judgment becomes final at the expiration of thirty days after its entry if no timely authorized after-trial motion is filed.
>
> (2) If a party timely files an authorized after-trial motion, the judgment becomes final at the earlier of the following:
>
> (A) Ninety days from the date the last timely motion was filed, on which date all motions not ruled shall be deemed overruled; or
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> (B) If all motions have been ruled, then the date of ruling of the last motion to be ruled or thirty days after entry of judgment, whichever is later.
>
> (3) The filing and disposition of such motions has the same effect on time for appeal in all cases whether or not the motion has any function other than to seek relief in the trial court.
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> (b) Premature Filing of Appeal. In any case in which a notice of appeal has been filed prematurely, such notice shall be considered as filed immediately after the time the judgment becomes final for the purpose of appeal.
>
> (c) Computation of Time. The ninety-day period shall be computed as in Rule 78.06.

[6] The following are authorized after-trial motions, which are treated as a motion for new trial: a motion to dismiss without prejudice after the introduction of evidence, commenced pursuant to Rule 67.01; a motion for a directed verdict under Rule 72.01(a); a motion for a judgment notwithstanding the verdict under Rule 72.01(b); a motion to amend the judgment under Rule 73.01(a)(3); a motion for relief from judgment or order under Rule 74.06(a) and (b), but see Rule 74.06(c); and a motion for a new trial under Rule 78. Taylor v. United Parcel Serv., Inc., 854 S.W.2d 390, 392 n.1 (Mo. banc 1993).

[7] Pursuant to Rule 75.01, a trial court retains control over judgments for 30 days after entry of a judgment and may, after giving the parties an opportunity to be heard and for good cause, vacate, reopen, correct, amend, or modify its judgment within that time. However, only certain civil rules apply in probate proceedings, and Rules 74 through 78, addressing post-trial motions on judgments, are not included in those rules, unless the court, following prior notice to all parties, orders those rules to apply. Rule 41.01.

inconsistent with the purpose of [Section] 472.160.1(1)-(13), which is intended to allow expedited appeals from such orders." Id. at 752 (emphasis added).

Standley's concurring opinion contrasts the jurisdictional limitation of Rule 81.05 with the computation of the time for filing a notice of appeal from an interlocutory probate order that is permissively appealable pursuant to Section 472.160.1 "because no similar, automatic loss of jurisdiction takes place." 204 S.W.3d at 751. The court explains, "[u]nless an appeal is taken, the trial court in a probate proceeding retains jurisdiction, for good cause, to vacate or modify its orders at any point prior to the expiration of the time for appealing from the order of final distribution of a decedent's estate." Id.; see Section 472.150; "Indeed, even if an interlocutory appeal is attempted, the court has the discretionary authority to stay the appeal until the decree of final distribution and to require that it be heard along with any other appeals from the final order of distribution." See Section 472.190.

However, in ascertaining a typical final judgment, Rule 81.05 provides, "[i]f a timely, authorized after-trial motion is filed, a judgment becomes final on the earlier of: (1) 90 days from the date the last such motion was filed; or (2) the date when the last such motion is ruled." Rule 81.05; In re Estate of Standley, 204 S.W.3d at 751. The court notes that "this delay in finality corresponds to the time period during which the trial court continues to have jurisdiction to grant relief for grounds raised in the motion(s). Thus, the initial 30-day delay in finality, as well as the additional delay of up to 90 more days, is intended to delimit the point in time at which a trial court loses control over its judgment, regardless of whether an appeal is taken." Id. (citations omitted).

We also find instructive the court's decision, In re Estate of Smith, 284 S.W.3d 198, 200 (Mo. App. S.D. 2009), which is further on point in that the appellant appealed from the "Judgment/Order" of the probate court denying his "Motion to Vacate, Modify Or Reopen With

Alternative Motion to Set Aside" a judgment entered by the probate court. Quoting from Standley, 204 S.W.3d at 749-50, the court explained:

> [S]ection 472.160 creates an expedited right to appeal certain probate orders which otherwise would be interlocutory and unappealable. Such expedited appeals serve the salutary purpose of allowing many matters of importance to be resolved while the estate is open, and prevents one complex appeal from all matters that occurred during the administration of the estate. It follows that because an appeal from one of the orders listed in section 472.160 is permitted while the estate is still open, such orders are immediately appealable upon entry. The orders listed in section 472.160 are ready for appeal when made.

(internal quotations and citations omitted). The court continued on to discuss the permissive use of Section 472.160:

> [a]n immediate appeal of orders falling within the purview of [section] 472.160 is not mandatory; the statute merely creates a right of appeal. If a party chooses not to exercise this right, the particular matter may be appealed *following final settlement or other judicial action fully and finally disposing of the proceeding*.

Burg, 68 S.W.3d at 545 (internal citations omitted) (emphasis added).

In Smith, the court's review failed to find a provision under which the appellant could statutorily appeal from the probate court's interlocutory "Judgment/Order" denying his motion to set aside, vacate, or re-open the judgment. 284 S.W.3d at 201. The court stated, "There is simply no statutory authority under which this appeal is proper at this juncture in the probate proceedings." Id. Even Section 472.160.1(14), which provides for appeals in "all other cases where there is a final order or judgment of the probate division . . . ", did not avail the appellant. Id. The court highlighted the fact that "an order which fails to fully dispose of all issues *and the rights of all parties relating to a specific probate proceeding* is not a final appealable order." Id. (citing Estate of Sawade v. State, 787 S.W.2d 286, 288 (Mo. banc 1990)) (emphasis added). The court found that the judgment of the probate court overruling the appellant's motion "hardly comports with the proviso as set out in italics. Clearly the rights of all parties were not affected

by the probate court's ruling" denying the appellant's motion to set aside, vacate, or re-open the judgment. Id.

Here, the trial court's June 12, 2017 order did not resolve all issues in the case, nor did it fully dispose of all the rights of all the parties relating to the probate proceeding. The June 12, 2017 order now appealed from denied Appellant's motion to vacate various interlocutory orders from the probate court: orders for waste of March 31, 2016, and March 31, 2017, orders for attorney's fees of March 29, 2013, and March 31, 2017. The order was not a final judgment.

Appellant attempts to find authority in Section 472.160 for appealing interlocutory orders relating to the probate court, and relies on subsections 1(7) and 1(10), noting that the matters fall within judgments for waste with respect to the $34,210.34 ordered by the probate court on March 30, 2017, to be paid by Appellant, the former conservator of the estate, or judgments for attorney's fees and/or conservator's fees confirmed on March 29, 2013, and March 31, 2017, by the probate court. Appellant admits that Rule 81.04(a) allows ten days after entry of judgment to file a notice of appeal from such interlocutory judgments. We do not disagree that these orders may have been appealable interlocutory orders pursuant to Section 472.160, had they been properly noticed for appeal within ten days from each of these probate orders that Rule 81.04 allows. Now, as Appellant complains of court delay throughout his case, it is clear he took no initiative to use the expedited appeal under Section 472.160, for which its purpose was intended, to his advantage.

Rather, instead of filing an expedited appeal within ten days of these specific orders regarding which Appellant complains, Appellant waited to act. He now expects that each of these orders were somehow revived by his April 26, 2017 motion, identified as "First Amended Petition for Reconsideration and Petition to Amend This Court's Judgments of March 31, 2016 and March 31, 2017 With Respect to [Appellant's] Removal As Conservator And The

Determination Of His Liability To This Estate As Well As The Judgments Of March 29, 2013 And March 31, 2017 With Respect To Attorney's Fees And Petition For A New Trial Of All Of The Orders And Judgments Rendered By The Deputy Commissioner In This Matter," and referred to by the Public Administrator as Appellant's "Petition for Reconsideration and Limited Motion to Vacate." Appellant contends that the probate court's denial of his motion on June 12, 2017, became the new interlocutory order which was permissively appealable pursuant to Section 472.160.1(1)-(13). With this, we disagree.

As the courts in Forhan, Burg and Kemp all hold, an interlocutory probate order, appealable pursuant to Section 472.160, is final upon entry. In re Estate of Standley, 204 S.W.3d at 750 (citing In re Estate of Forhan, 149 S.W.3d at 542); In re Estate of Burg, 68 S.W.3d at 544-45; Kemp v. Balboa, 959 S.W.2d at 118. "The orders listed in [section] 472.160 are ready for appeal when made." Kemp, 959 S.W.2d at 118. As discussed by the court's concurring opinion in Standley, the purpose of Section 472.160.1(1)-(13) is to allow expedited appeals from such specific orders, and to extend the parties' time for appeal to begin the clock later from an attempted umbrella motion to revive such orders is inconsistent with the purpose of the statute that allows for such expedited interlocutory appeals. Because Appellant took no appeal from the interlocutory orders pursuant to Section 472.160.1(1)-(13) within the ten days from the orders dated March 29, 2013; March 31, 2016; and March 31, 2017, his only remaining option for appealing is at the time of final distribution of the estate, then a final judgment.

Accordingly, we lack authority to address the merits of the cause and must dismiss the appeal. Smith, 284 S.W.3d at 201 (citing Matter of Nocita, 845 S.W.2d 574, 575 (Mo. App. E.D. 1992)) (holding that orders not enumerated in Section 472.160 are not appealable and such appeals should be dismissed)); Matter of Hancock, 834 S.W.2d 239, 241 (Mo. App. S.D. 1992) (holding that where the appellant's claims on appeal were not enumerated in the exceptions stated

in Section 472.160, the appeal must be dismissed)). "Nevertheless, it is important to note the limited effect of our ruling. "As this Court explained in Forhan, 'the right of appeal created by [Section] 472.160 is permissive, rather than mandatory.'" In the Estate of Straszynski, 265 S.W.3d 394, 396 (Mo. App. S.D. 2008) (quoting Forhan, 149 S.W.3d at 542). "Dismissal of [Appellant's] . . . appeal simply means that this case remains in the same procedural posture as if no permissive appeal had been attempted. [Appellant] retains the right to appeal from the decree of final distribution." Id.

III. Conclusion

Having no authority to review Appellant's arguments, this appeal is dismissed.

ROY L. RICHTER, Judge

Lisa P. Page, P.J., concurs
Philip M. Hess, J., concurs