COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE:	§	
		No. 08-21-00113-CV
PRISCILA ARMENDARIZ MIRAMONTES, Individually, and as Independent Administrator of the Estate of ALEJANDRO FRANCISCO FERNANDEZ VALLES,	§	AN ORIGINAL PROCEEDING
	§	IN MANDAMUS
Relator.	§	

MANDAMUS OPINION

Relator, Priscila Armendariz Miramontes, Individually, and as Independent Administrator of the Estate of Alejandro Francisco Fernandez Valles, (Miramontes) filed a mandamus petition against the Honorable Eduardo Gamboa, Judge of the Statutory Probate Court Number Two in El Paso County, Texas, asking us to order Judge Gamboa to vacate the trial court's order granting bill of review in favor of Real Party in Interest, Ignacio Fernandez (Ignacio).

We decline to do so. We find the trial court did not commit a clear abuse of discretion in granting bill of review in favor of Ignacio and setting aside the underlying judgments. Miramontes' petition is denied.

BACKGROUND

The Life Insurance Policy

In 2009, American General Life Insurance Company (American General) issued a $3

million life insurance policy in which Alejandro Francisco Fernandez Valles (Alejandro) was the named insured (the Policy).[1] In 2010, Alejandro changed the primary beneficiary of the Policy from his wife, Relator, to his mother, Silvia Valles Hicks (Silvia). Following the change, Relator, Miramontes, Alejandro's wife, became the contingent beneficiary on the Policy. Thus, if Silvia predeceased Alejandro, Miramontes would obtain the Policy's proceeds. However, if Silvia was alive when Alejandro passed away, she would be entitled to the Policy's proceeds, which would then pass to her heirs upon her death via either (a) designation under a will, or (b) through the laws of intestacy.

Alejandro was kidnapped from his home in Chihuahua, Mexico, on June 16, 2011, and was never seen alive or heard from again.

On February 13, 2016, Silvia died intestate. Two days before her death, she submitted a claim for the proceeds under the Policy. However, without proof of Alejandro's death, American General would not pay the insurance proceeds.

Miramontes sought a declaration of death for Alejandro with the Morelos First Judicial Family Court for the State of Chihuahua, Mexico (hereafter, First Family Court). She made her first request on April 22, 2014, and on May 31, 2016, the First Family Court entered an order declaring Alejandro's presumed date of death was the date of his disappearance, June 16, 2011. An "Inscripcion de Defuncion,"[2] was issued June 10, 2016, filed with the State of Chihuahua,

[1] The parties dispute whether the policy was purchased by Alejandro or his mother, Silvia Valles.

[2] The translation provided in the record of the "Inscripcion de Defuncion" issued by the State of Chihuahua translates this title to "Death Certificate." However, other sources show "inscripcion" more accurately translates to "registration." *See* Translation of "Inscripcion de Defuncion," GOOGLE TRANSLATE, https://translate.google.com (type "inscripcion de defuncion" in left-hand field and translation will automatically generate in the right-hand field); Translation of "Inscripcion de Defuncion," SPANISHDICT.COM, https://www.spanishdict.com/translate/ (type "inscripcion de defuncion" in field and press enter; translation will generate below). This document title also differs from other documents in the record which are represented as death certificates issued by the State of Chihuahua, such

declaring Alejandro's presumed date of death was June 16, 2011.

On June 13, 2016, Miramontes submitted a claim to American General for the Policy's proceeds. Her claim included a copy of the "Inscripcion de Defuncion" indicating June 16, 2011, was Alejandro's "supposed" date of death.

Subsequently, Miramontes submitted to American General a "Presumption of Death" order issued by the First Family Court under a different case number declaring Alejandro's date of death to be May 31, 2016. This second "Presumption of Death" order from the First Family Court notes the May 31, 2016, the newly designated date of death was made at Miramontes' request. A death certificate, certified July 12, 2017, lists the date of death as May 31, 2016, which the certificate's marginal notes indicate is based on the "Presumption of Death" order entered by the First Family Court.[3] American General denied the claim, noting it could not confirm Alejandro's date of death, and had concerns the "Presumption of Death Certificate" submitted by Miramontes "had been materially altered from its original, official version."

The Interpleader Case and the Estate Cases

In March of 2017, American General filed an interpleader in the 34th Judicial District Court of El Paso, Texas (hereafter, the district court), styled *American General Life Insurance Company v. Priscilla Armendariz Miramontes, and Personal Representative of the Estate of Silvia Teresa Valles Hicks* (the Interpleader case). The insurance proceeds from the Policy were deposited in the registry of the court, less approximately $10,000 in attorney's fees and costs. Although the RPI,

as the document regarding Silvia's death or the subsequent documents issued regarding Alejandro's death, titled "Acta de Defuncion."

[3] Another death certificate admitted into evidence by the RPI at the bill of review trial, certified on May 29, 2017, states Alejandro's date of death was June 16, 2011, corrected from the previous date of death showing May 31, 2016. It is unclear from the record exactly how many death certificates were issued regarding Alejandro, or on which dates.

Ignacio, Alejandro's brother and Silvia's son, was listed in the petition as the personal representative of Silvia Valles' estate, he was not served with process in the case.

In May of 2017, Miramontes filed an "Application for Ancillary Probate of Authenticated Foreign Heirship Judgment and Issuance of Ancillary Letters of Administration; Recognition of Foreign Heirship Judgment; or in the Alternative, Application for Declaration of Heirship and Issuance of Letters of Independent Administration" in a new case styled *In re: the Estate of Alejandro Francisco Fernandez Valles* (Alejandro Estate case). The Alejandro Estate case was assigned to the Probate Court Number Two in El Paso County, Texas (probate court). The next day, Miramontes filed an "Application for Declaration of Heirship and for Appointment of Third Party Dependent Administrator, and Issuance of Letters of Administration" in a new case styled *In re: the Estate of Silvia Teresa Valles Hicks*, also assigned to the probate court (Silvia Estate case). Ignacio was not served with process in either case.

Hearings in both the Alejandro Estate case and the Silvia Estate case occurred on June 22, 2017. Miramontes testified in the Alejandro Estate case that Alejandro died on May 31, 2016, and the death certificate indicating as much was correct. Counsel for Miramontes also made a "disclosure" to the trial court at the end of the Alejandro Estate case hearing that, "Although it's not relevant to the proceedings, the decedent [Alejandro] met with foul play. He was kidnapped, and he's presumed deceased. There was an action that was filed in Mexico. There was a judgment, a presumption of death. . . . It was declaring him dead." Neither Miramontes nor her attorney mentioned any documents stating Alejandro's presumed date of death was the date of his kidnapping on June 16, 2011.

The judgments declaring heirship in both cases include "findings of fact and conclusions of law" stating Alejandro died on May 31, 2016. The judgment in the Silvia Estate case appointed

Karin Carson as a third-party dependent administrator of Silvia's estate.

In the Interpleader case, after her appointment as third-party dependent administrator in the Silvia Estate case, Karin Carson waived citation of service on behalf of Silvia's estate and filed a general denial on its behalf. Miramontes then filed a crossclaim against Silvia's estate and moved for summary judgment. The summary judgment asserted the judgment in the Alejandro Estate case "issu[ed] findings of fact and conclusions of law determining [Alejandro's] date of death to be May 31, 2016. The court recognized the date of death as determined by the Third Civil Court of Hearings . . . , File Number E 591/2016."[4] Miramontes' motion likewise asserted the judgment in the Silvia Estate case "ma[de] findings of fact and conclusions of law determining [Silvia] died intestate on February 13, 2016[,] . . . and recognized that [Alejandro] had a judicially adjudicated date of death of May 31, 2016, a date subsequent to the death of [Silvia]."

The sole argument offered by Miramontes in her motion for summary judgment against the Silvia Estate in the Interpleader case was that the judgments in the Silvia Estate case and the Alejandro Estate case "concretely determined . . . that [Silvia] predeceased her son, [Alejandro], and that [Alejandro's] determined date of death was May 31, 2016. The issue was essential to the judgments in both actions, as the determination of who predeceased whom ultimately determined the distribution of the estate in both actions." Therefore, according to Miramontes' motion, "no genuine issues of material fact exist to contradict or call into question these thoroughly litigated and judicially adjudicated facts . . .[and] there is sufficient evidence for the [district court] to grant a summary judgment on this point."

On September 29, 2017, Ignacio entered an appearance through counsel in the Interpleader

[4] There was another judicial declaration of Alejandro's date of death in the Third Civil Court of Hearings during the probate proceedings for Alejandro's estate in Mexico.

case and, on November 28, 2017, filed a motion for continuance of the summary judgment proceedings initiated by Miramontes. He argued Miramontes' motion "relies on Judgments obtained in two separate proceedings wherein [Ignacio] was not afforded an opportunity to participate[,] . . . and were based on findings in the Mexican Courts which are currently on appeal and/or are being collaterally challenged in Mexico." The motion for continuance sought "additional time to challenge the Judgments adjudicating his rights before the insurance proceeds are wrongfully distributed." Miramontes opposed the appearance entered by Ignacio in the Interpleader case and the request for a continuance of the summary judgment hearing, arguing Ignacio "lacks standing in [the Interpleader case] as he has failed to show he has sustained, or is in immediate danger of sustaining, some direct injury as a result of the asserted causes of action in this case."

The district court entered judgment in favor of Miramontes on December 1, 2017, adjudging and decreeing Alejandro's date of death to be May 31, 2016, and Silvia's date of death to be February 13, 2016. It ordered the balance of the Policy's proceeds in the court's registry to be paid to Miramontes through her counsel. The same day, the district court struck Ignacio's entry of appearance through counsel, decreeing Ignacio lacked standing to participate in the Interpleader case and was not a party.

The Bills of Review

On February 16, 2021, Ignacio filed his third amended petitions for bill of review in three separate causes: cause number 2019-CPR00102, styled *Ignacio Javier Fernandez Valles v. Priscila Armendariz Miramontes, Individually, and as Independent Administrator of the Estate of Alejandro Francisco Fernandez Valles*, in the probate court (Alejandro Bill of Review); cause number 2019-CPR00098, styled *Ignacio Javier Fernandez Valles v. Priscila Armendariz*

Miramontes, Individually and as Independent Administrator of the Estate of Alejandro Francisco Fernandez Valles, and Karin Carson, as Third-Party Dependent Administrator of the Estate of Silvia Teresa Valles Hicks a/k/a Silvia Valles a/k/a Silvia V. Hicks a/k/a Silvia Hicks a/k/a Silvia Teresa Valles Hicks a/k/a Sylvia Valles a/k/a Silvia V. Hicks a/k/a Sylvia Hicks, in the probate court (Silvia Bill of Review); and cause number 2019-DCV0260, styled *Ignacio Javier Fernandez Valles v. Priscila Armendariz Miramontes, Individually and as Independent Administrator of the Estate of Alejandro Francisco Fernandez Valles, and Karin Carson as Third-Party Dependent Administrator of the Estate of Silvia Teresa Valles Hicks a/k/a Silvia Valles a/k/a Silvia V. Hicks a/k/a Silvia Hicks a/k/a Silvia Teresa Valles Hicks a/k/a Sylvia Valles a/k/a Silvia V. Hicks a/k/a Sylvia Hicks*, in the district court (Interpleader Bill of Review)(collectively, the bills of review).

The bills of review each set forth identical factual premises. First, following Alejandro's kidnapping on June 16, 2011, Miramontes had Alejandro's adjudicated date of death illegally changed from June 16, 2011, to May 31, 2016, through various ex parte judicial proceedings in Mexico, to appear as though Silvia predeceased him so Miramontes could obtain the full value of the Policy proceeds. Additionally, after the various death certificates were issued, a body found in Mexico in May of 2012 was discovered to be a fifty-percent genetic match to one of Alejandro and the Miramontes' children, indicating the body found in 2012 was almost certainly Alejandro's. An investigation by the Attorney General's Office for the State of Chihuahua unofficially confirmed the body's identification based on a forensic geneticist's expert report. Ignacio accused Miramontes of intentionally withholding this information from the courts to obtain the $3 million under the Policy.

The Bills of Review assert Ignacio was not made a party or served with process in the Silvia Estate case, the Alejandro Estate case, or the Interpleader case, despite the outcomes of those

proceedings materially affecting his property rights. Specifically, in the Silvia Estate case, Ignacio was a known heir of Silvia's and thus, under section 202.008 of the Estates Code, he was required to be served with process. In the Alejandro Estate case, Ignacio states he was entitled to service of process and/or notice of the hearing because the substance of the hearing was seeking an adjudication of death for Alejandro based on the death certificate with a May 31, 2016, date of death. He also states, as a creditor of Alejandro's estate, he was entitled to notice of the hearing. In the Interpleader case, Ignacio stated he attempted to participate in those proceedings; however, his appearance was struck for lack of standing. He alleges he was a necessary party to the Interpleader case because the outcome directly affected property to which he was entitled—his half of the $3 million Policy proceeds—as, his mother, Silvia's heir.

In pleading for bill of review, Ignacio requested both statutory and equitable bills of review for the Alejandro Estate and Silvia Estate judgments. In requesting statutory relief, Ignacio stated, "there is substantial error in the Silvia Estate Judgment and Alejandro Estate Judgment" based on the incorrect date of death, and the judgments were obtained without service of process or notice to Ignacio. Ignacio also claimed the judgment in the Interpleader case is null and void "as it is the fruit of the wrongful actions in the earlier proceedings." Each petition for bill of review also requested relief in equity, claiming Ignacio had meritorious defenses, including that the May 31, 2016, date of death was incorrect and the judicial findings and death certificate showing that date were illegally obtained by Miramontes. Ignacio claimed the judgments in the three cases "were secured by accident, fraud, and/or mistake[,]" and he was not at fault or negligent in failing to raise the issues previously in any of the three cases. He pleaded for all three judgments to be set aside under statutory and equitable bases. He also asserted causes of action for fraud, breach of fiduciary duty, declaratory judgment, restitution, money had and received, abuse of process, and requested

injunctive relief to prevent Miramontes from spending $1.5 million of the Policy proceeds awarded to her in the Interpleader case. His petition sought actual damages, attorney's fees and interest, and exemplary damages.

Transfer of the Interpleader Bill of Review

On August 1, 2019, Ignacio moved to transfer the Interpleader Bill of Review to Probate Court Number Two. Miramontes filed a response opposing the transfer on October 30, 2019. In January of 2020[5], the district court entered an order transferring and assigning the Interpleader case to the probate court. Apparently unaware of the district court's order transferring the case, the parties obtained a second order transferring the case on February 25, 2020. The district clerk formally transferred the case to the probate court in a letter filed March 3, 2020.

Trial on the Bills of Review

A hearing on the Bills of Review occurred on February 22, 2021.[6] The probate court admitted into evidence almost three thousand pages of documents from the parties, which now compose the record in this original proceeding. Among the evidence were the court records from the First Family Court where conflicting findings over Alejandro's date of death were originally made, and the accompanying death certificates; relevant pleadings from the Alejandro Estate case,

[5] The date of the order states it was signed January 13, 2020. However, the parties seem to agree the hearing on the motion to transfer occurred on January 31, 2020. Regardless of the exact date, which is not pertinent, the order was signed and entered in January of 2020.

[6] The reporter's record from the February 22, 2021, proceedings indicate it was a motions hearing. However, for all intents and purposes, substantively it appears to be a bench trial on the Bills of Review. Neither party raised any issue regarding the sufficiency of the hearing on the merits of the Bills of Review, except for Ignacio's issue regarding notice of the consideration regarding the merits of the Interpleader Bill of Review. Accordingly, we assume the February 22, 2021, proceedings were a trial on the merits of the Bills of Review, particularly since the parties presented, and the court considered, substantial evidence during the proceeding, and weighed that evidence in making its decision. *See Baker v. Goldsmith*, 582 S.W.2d 404, 408-09 (Tex. 1979)(if a petitioner seeking equitable bill of review makes its prima facie showing of a meritorious defense, the court conducts a trial of the various issues in the bill of review).

the Silvia Estate case, and the Interpleader case; the claims file from American General; and documents from legal proceedings Ignacio initiated in Mexico to obtain information about Alejandro's kidnapping, recovery of his body, and reformation of his death certificate. Additionally, Ignacio offered, and the probate court admitted, certified translations of investigation files from the Attorney General of the State of Chihuahua regarding the likely identification of Alejandro's body in 2012 based on genetic testing. Of particular note was an order from the Attorney General for the State of Chihuahua stating, upon official confirmation by their investigators "definitively confirming" the recovered body belonged to Alejandro, judicial proceedings to reform the presumptions of death and death certificates issued previously by the Chihuahuan family courts and civil registry with a corrected date of death would be possible.

At the outset of the hearing, the probate court sought arguments from counsel regarding notice to Ignacio. Following their arguments, which largely mirrored the substance of their pleadings, the probate court indicated its previous concern during the Silvia Estate proceedings Ignacio needed to be served with process. Counsel for Miramontes essentially conceded this issue, but reiterated Miramontes' position Ignacio "doesn't have any fundamental right to ask for the Court, at the inception of the case, to be notified that his brother's estate is going to be probated; as a creditor, absolutely no right." Counsel for Ignacio likewise reiterated the proceedings in the Alejandro Estate case sought an adjudication of Alejandro's date of death as their primary relief in that case, which, because it is a contested fact and directly affects Ignacio's rights, Ignacio should have participated in those proceedings. From the bench, the probate court indicated Miramontes failed to serve Ignacio in either of the estate cases. It likewise indicated inserting a statement regarding the adjudication of Alejandro's date of death in the heirship orders "was not proper." The trial court went on,

> That should have never been inserted there. . . . What propelled this case and the decisions that were made with [the 34th district court in the Interpleader case] is exactly because of what I signed, as far as the date of deaths [sic]. We're not in the business of determining date of deaths [sic] when they're at issue. . . . The Court finds that there was no proper notice. The Court is going to set aside the two orders that I signed on the respective heirship determinations. And then, [counsel for Ignacio], you're going to provide me with an order setting aside or striking the judgment [in the Interpleader case].

Procedural Matters and Rendition of Order Granting Bills of Review

Near the conclusion of the hearing on February 22, 2021, the parties discussed the need to tie up loose procedural ends regarding transfer and consolidation of the cases before an order on the Bills of Review was signed.

Previously, on August 4, 2020, Ignacio moved to consolidate the three cases under one cause number in the probate court. Miramontes filed a motion opposing consolidation on February 17, 2021. However, as of the hearing date, the three cases remained under separate cause numbers in the probate court.

On March 4, 2021, the probate court consolidated the three cases under one cause number. On March 5, 2021, the probate court entered a single order granting Ignacio's Bills of Review. The same day, the probate court entered two additional orders setting aside the June 22, 2017, Judgement Declaring Heirship in the Alejandro Estate case, and the June 22, 2017, Judgment Declaring Heirship in the Silvia Estate case.[7]

DISCUSSION

Miramontes presents two issues in this original proceeding. First, she contends the trial court abused its discretion in granting Ignacio's Bill of Review in the Alejandro Estate case

[7] The consolidation order, the order granting Bill of Review, and the two orders setting aside the judgments in the Silvia Estate case and the Alejandro Estate case were all signed by the probate court on March 4, 2021. However, the order granting Bill of Review and the two orders setting aside the probate court judgments in the Alejandro Estate case and Silvia Estate case were not filed until March 5, 2021.

because Ignacio was not entitled to notice of hearing or service of process in a proceeding to declare heirship. Second, she argues the trial court erred when it granted the Interpleader Bill of Review because (1) it was not scheduled to be heard on that date, and (2) Ignacio failed to establish the common law elements required to obtain a bill of review.

Standard of Review

"Mandamus is an extraordinary remedy[.]" *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d 300, 302 (Tex. 2016)(orig. proceeding). To be entitled to mandamus relief, a relator must meet two requirements. First, the relator must show that the trial court clearly abused its discretion. *In re Prudential Insurance Company of America*, 148 S.W.3d 124, 135 (Tex. 2004)(orig. proceeding). Second, the relator must demonstrate that there is no adequate remedy by appeal. *Id.* at 135-36. Proving both requirements is the burden of the relator. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d at 302.

Texas intermediate courts of appeals are split on whether mandamus relief is available for an interlocutory bill of review granted by a trial court. *See In re Office of Att'y Gen.*, 276 S.W.3d 611, 620 (Tex.App.—Houston [1st Dist.] 2008, orig. proceeding)(noting split in authority amongst intermediate courts of appeals on whether mandamus may issue for interlocutory grant of bill of review). The two courts of appeals in Houston have resisted granting mandamus relief on such an occasion, as has our sister court in Austin, holding that the litigants' right to appeal the final judgment presented an adequate remedy on appeal, thereby precluding mandamus relief.[8] Our sister courts in San Antonio, Dallas, Corpus Christi, and Waco, however, have held mandamus

[8] *See In re Moreno*, 4 S.W.3d 278, 281 (Tex.App.—Houston [14th Dist.] 1999, orig. proceeding); *Patrick O'Connor & Assoc., L.P. v. Wang Inv. Networks, Inc.*, Nos. 01-12-00615 & 01-12-00976, 2013 WL 1451358 (Tex.App.—Houston [1st Dist.] April 9, 2013, orig. proceeding, no pet.)(combined mandamus and appeal)(mem. op.); *Ott v. Files*, No. 03-00-00612-CV, 2000 WL 1675737, at *1 (Tex.App.—Austin Nov.9, 2000, no pet.)(not designated for publication).

relief may be available to review an interlocutory bill of review because the ability to review a final judgment does not necessarily present an "adequate" remedy on appeal.[9] Even in courts willing to consider the availability of mandamus relief to overturn an interlocutory bill of review, such relief is not granted as a matter of right; the relator must still prove both that (1) the trial court clearly abused its discretion, and (2) there is no adequate remedy by appeal. *In re Prudential Ins. Co. of America*, 148 S.W.3d at 135-36; *see also In re Duncan*, No. 13-18-00261-CV, 2018 WL 2293483 at *1 (Tex.App.—Corpus Christi-Edinburg May 18, 2018, orig. proceeding) (acknowledging availability of mandamus relief to review an order granting bill of review, but finding relator failed to show herself entitled to such relief); *In re Spiller*, 303 S.W.3d at 430-31, 435 (same).

This Court has not yet considered whether mandamus relief may be available on an interlocutory bill of review, or if the litigants' ability to appeal the bill of review upon final judgment presents an adequate remedy by appeal. However, before we consider that question, if at all, we consider whether the trial court clearly abused its discretion in granting Ignacio's Bills of Review. If the answer is "no," we need not decide today whether Relator has an adequate remedy by appeal. *See In re Prudential Ins. Co. of America*, 148 S.W.3d at 135-36.

Bills of Review

"A bill of review is an independent action to set aside a judgment that is no longer appealable or subject to challenge by a motion for new trial." *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 926-27 (Tex. 1999). "[B]ills of review exist to provide a failsafe against manifest

[9] *See In re Nat'l Unity Ins. Co.*, 963 S.W.2d 876, 877 (Tex.App.—San Antonio 1998, orig. proceeding); *Schnitzius v. Koons*, 813 S.W.2d 213, 218 (Tex.App.—Dallas 1991, orig. proceeding); *In re Texas Dep't of Transp.*, No. 13-02-00652-CV, 2003 WL 255941, at *2 (Tex.App.—Corpus Christi Feb. 6, 2003, orig. proceeding)(mem. op.); *In re Spiller*, 303 S.W.3d 426, 430-431 (Tex.App.—Waco 2010, orig. proceeding).

injustice and the wrongful deprivation of a litigant's right to trial and appeal in extraordinary circumstances." *Bowers v. Bowers*, 510 S.W.3d 571, 577 (Tex.App.—El Paso Apr. 8, 2016, no pet.). They are not looked upon favorably, "as our justice system has a strong interest in ensuring that controversies are permanently settled at one time and that litigants will not resurrect dead cases . . . simply because they later regret not raising certain issues when they had the chance." *Id.*

Bills of review can be sought under statutory law or common law in equity. *See Valdez v. Hollenbeck*, 465 S.W.3d 217, 226 (Tex. 2015). Under the Estates Code, the Legislature provided a means for "interested person[s]" to file a bill of review to revise or correct an order or judgment of a probate court upon a showing of error in the order or judgment. TEX.EST. CODE ANN. § 55.251. To do so, the interested person must file the bill of review within two years of the date of the order or judgment. *Id.* § 55.251(b). To succeed in a statutory bill of review, the petitioner must show "substantial error" in the prior order or judgment it seeks to set aside. *See Valdez,* 465 S.W.3d at 226. Lack of actual or constructive notice to a person where they were entitled to it under the rules constitutes substantial error. *See Chavez v. Chavez*, No. 01-13-00727-CV, 2014 WL 5343231, at *1 n.1, *5, (Tex.App.—Houston [1st Dist.] Oct. 21, 2014, no pet.)(lack of actual or constructive notice of a summary judgment motion, notice of hearing, or requests for admission, constituted substantial error in statutory bill of review brought under the Probate Code, now section 55.251 of the Estates Code).

At common law, a claimant seeking an equitable bill of review must generally establish three things: (1) a meritorious defense to the underlying cause of action; (2) which the plaintiff was prevented from making due to the opposing party's fraud, accident, or wrongful act, or official mistake; (3) unmixed with the plaintiff's own fault or negligence. *Mabon, Ltd. v. Afri–Carib Enters., Inc.*, 369 S.W.3d 809, 812 (Tex. 2012); *Valdez*, 465 S.W.3d at 226. "But when a bill-of-

review plaintiff claims a due process violation for no service or notice, it is relieved of proving the first two elements[.]" *Mabon,* 369 S.W.3d at 812. As for the third element, the bill-of-review plaintiff "must only prove that its own fault or negligence did not contribute to cause the lack of service or notice." *Katy Venture, Ltd. v. Cremona Bistro Corp.*, 469 S.W.3d 160, 163 (Tex. 2015)(per curiam). Due process requires notice "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." *Wimpy v. Motel 6 Op., L.P.*, 461 S.W.3d 619, 626 (Tex.App.—El Paso 2015, judgm't vacated w.r.m.)(citing *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988)). While the sufficiency of notice is fact-specific to each case, if notice is not meaningful, constitutional due process requirements are not satisfied. *Id.*

Issue One: Was Ignacio Entitled to Service of Process and/or Notice of Hearing in the Alejandro Estate Case?

In her first issue, Miramontes argues the trial court abused its discretion when it set aside the judgment in the Alejandro Estate case for lack of service of process or notice of hearing. Miramontes claims because Ignacio is not an heir to Alejandro's estate, he was not entitled to be served with process in the case, nor was he entitled to notice of the hearing. Miramontes argues she was only required to list and provide service of process to the heirs to Alejandro's estate. *See* TEX.EST. CODE ANN. § 202.005. Additionally, she claims Ignacio was not a required party to the proceeding to declare heirship in the Alejandro Estate case because Ignacio is neither a known or unknown heir of Alejandro, nor does he own a share or interest in real property that is listed in the application to declare heirship. *See* TEX.EST. CODE ANN. § 202.008.

Ignacio counters because the hearing in the Alejandro Estate case decided more than who the heirs of Alejandro's estate were, the outcome of which directly affected his rights, he was entitled to participate in the proceedings as a party, be served with process, and receive notice of

the hearing. Ignacio argues the hearing in the Alejandro Estate case sought "domestication of the Foreign Proceeding Judgment" regarding the court order declaring Alejandro's date of death to be May 31, 2016, and a declaration of Silvia's date of death and its alleged occurrence prior to Alejandro's date of death, as evidenced by the application filed by Miramontes in the Alejandro Estate case. Neither of these representations made by Miramontes in the application, according to Ignacio, relate to determining the heirs to Alejandro's estate.

As a procedural matter, we note Ignacio sought Bill of Review under statutory and equitable bases. The order granting Bill of Review does not state upon which grounds it was granted. Under such circumstances, we will affirm the decision of the trial court under any basis asserted that is supported by the evidence. *See Rosemond v. Al-Lahiq*, 331 S.W.3d 764, 766-67 (Tex. 2011). However, the Texas Supreme Court has stated that in probate matters, the two-year limitations period prescribed in section 55.251(b) (formerly section 31 of the Probate Code) supersedes the four-year limitations period afforded in equitable bills of review. *See Valdez*, 465 S.W.3d at 227. It did not decide whether in creating a statutory bill of review for cases in the probate courts, the Legislature intended to abrogate equitable bills of review in probate matters. *Id.* Nevertheless, we begin our inquiry by determining whether there was a legal basis for the trial court to grant statutory bill of review. Miramontes has not contested Ignacio's status as an "interested person" or the timeliness of filing his Bills of Review. Accordingly, we need only determine whether Ignacio successfully proved substantial error by a preponderance of the evidence.

Section 202.008 of the Estates Code requires that certain persons must be made a party in a proceeding to declare heirship. *See* TEX.EST. CODE ANN. § 202.008. As neither an heir nor a person owning a share or interest in any real property that is described in the application of heirship

in the Alejandro Estate case, Ignacio is not a person described in section 202.008. Moreover, section 51.001(a) states, "Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice except in a situation in which this title expressly provides for citation or the giving of notice." *Id.* § 51.001(a). This provision, in its previous statutory home under the Probate Code's section 33, has been interpreted previously by other courts as precluding application of the broader joinder-of-parties rule under the Rules of Civil Procedure in certain matters clearly governed by the Estates and/or Probate Code.[10] *See Wojcik v. Wesolick*, 97 S.W.3d 335, 337-38 (Tex.App.—Houston [14th Dist.] 2003, no pet.)(holding that section 33(a) of the Probate Code states no person needs to be joined as a party or provided notice of proceedings unless expressly required by the Probate Code, directly contradicting rule 39 regarding joinder under the Rules of Civil Procedure; thus rule 39 joinder rules could not apply to a will contest); *but see Ablon v. Campbell*, 457 S.W.3d 604, 614 (Tex.App.—Dallas 2015, pet. denied)(holding that rule 39 applied to a trust proceeding where nothing in the Probate Code or Trusts Code conflicted with the requirements for indispensable parties under rule 39); *see also* TEX.R.CIV.P. 2 (describing scope of the Rules of Civil Procedure); TEX.R.CIV.P. 39 (describing rule for joinder of persons to civil actions). Thus, if the nature of the hearing in the Alejandro Estate case was simply to declare the heirs of his estate, Ignacio would have an uphill climb to prove the trial court

[10] Rule 39 regarding the joinder of parties states, in pertinent part:

> **(a) Persons to be Joined if Feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

TEX.R.CIV.P. 39.

committed substantial error in not joining him as a party and serving him with process in the lawsuit, or otherwise notifying him of the proceedings in the case.

Let us now examine the nature of the Alejandro Estate case and the hearing that took place on June 22, 2017. First, we consider the application filed by Miramontes and the substance of the relief sought from the trial court in the Alejandro Estate case. It is well-established in Texas jurisprudence the substance of a pleading, and not necessarily its form or title, governs the manner in which a court treats it. *See, e.g.*, *Brumley v. McDuff*, 616 S.W.3d 826, 833 (Tex. 2021)(where plaintiff's petition stated a trespass to try title claim, it was treated as such, despite requesting that the court quiet title to the property); *Janner v. Richardson*, 414 S.W.3d 857, 859 (Tex.App.—Houston [1st Dist.] 2013, no pet.)(collecting cases regarding misnomer of pleading rules) *see also* TEX.R.CIV.P. 71 ("When a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it had been properly designated."). Miramontes' application in the Alejandro Estate case asks first for the trial court to grant the application for ancillary probate and issue ancillary letters of administration; second, recognize the foreign judgment which states, among other things, Alejandro's date of death was May 31, 2016; and, in the alternative, determine and declare the heirs of Alejandro's estate and their respective shares and interests, and appoint Miramontes as independent administrator.

At the hearing in the Alejandro Estate case, the very first request made by counsel for Miramontes was "to recognize the Mexican judgment so there's consistency." Miramontes' counsel then called several witnesses to testify, beginning with Miramontes. Miramontes testified, at the time of Alejandro's death, she was his spouse. She also answered in the affirmative when asked if "[t]he State of Chihuahua issued a certificate of death indicating that [Alejandro] had become deceased on May the 31st of 2016[.]" The death certificate was made an exhibit to the

proceedings. Miramontes then testified a probate proceeding for Alejandro's estate was opened in the Third Civil Court of Hearings of the Morelos Judicial District in Chihuahua (Third Civil Court). Counsel elicited Miramontes' testimony the judgment from the Third Civil Court indicated Alejandro "passed away on May 31st of 2016[.]" The trial court then admitted the judgment from the Third Civil Court into evidence. After the testimony regarding Alejandro's purported date of death, Miramontes testified about the Third Civil Court's findings regarding Alejandro's heirs. Then, Miramontes testified Silvia was her mother-in-law and "she passed away prior to [Alejandro] passing away[.]" Finally, near the conclusion of the hearing, counsel for Miramontes stated on the record,

> I would like to give the [trial court] a disclosure. I like to act with complete transparency. Although it's not relevant to the proceedings, the decedent met with foul play. He was kidnapped, and he's presumed deceased. There was an action that was filed in Mexico There was a judgment, a presumption of death . . . declaring him dead. . . . And in Mexico, it's different than the United States. The date of death is the date of the judgment. It's not a delayed death certificate.

The Alejandro Estate case judgment included "findings of fact and conclusions of law[,]" among them that "ALEJANDRO FRANCISCO FERNANDEZ VALLES was declared and is deceased, with a May 31, 2016 date of death." The judgment also stated, "IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Decedent, ALEJANDRO FRANCISCO FERNANDEZ VALLES is hereby declared and is deceased, with a May 31, 2016, date of death. The judgment also included findings regarding the adjudication of heirs for Alejandro, and appointed Miramontes as independent administrator of Alejandro's estate.

It is apparent from our review of the record in the Alejandro Estate case a significant goal of Miramontes' was to patriate the judgment from the Mexican courts declaring Alejandro's date of death as having occurred on May 31, 2016. Seeking a declaration of the heirs of Alejandro's estate, while certainly a result sought by Miramontes, was secondary to adopting the contents of

the Mexican court's judgment into a judgment from a Texas court—Miramontes' application expressly indicates as much. Accordingly, we find because the application filed by Miramontes and the hearing in the case addressed issues beyond a simple determination of heirship, we are not confined to the list of required parties contained within section 202.008. *See* TEX.EST.CODE ANN. §§ 51.001(a), 202.008.

Furthermore, even if we ignored the contents of the application, the relief sought therein, the substance of the matters covered by the hearing, and the contents of the judgment in the Alejandro Estate case and the determination it was a simple heirship proceeding where section 202.008 applied, section 51.001(b) still authorizes a trial court to require notice as it sees fit. *See* TEX.EST. CODE ANN. § 51.001(b). Where section 51.001(a) obviates the need for citation or notice unless expressly required by Title 2 of the Estates Code, subsection (b) states, "If this title does not expressly provide for citation or the issuance or return of notice in a probate matter, **the court may require that notice be given. A court that requires that notice be given may prescribe the form and manner of service of the notice and the return of service.**" *Id.* § 51.001(b)[Emphasis added]. Thus, where a trial court determines service of process and/or notice of proceedings are warranted, it has the discretion to require it. *See id.*

Here, the trial court unequivocally indicated it erred in not requiring service upon Ignacio in the Alejandro Estate case, considering the case addressed contested matters regarding Alejandro's date of death of which Ignacio presented evidence in the Bill of Review proceedings. It is within the discretion of the trial court to require service and/or notice if it deems the situation warrants it, and it is within the discretion of the trial court to determine it committed substantial error in not requiring it when the issue is raised in a statutory bill of review. *See Wojcik*, 97 S.W.3d

at 337 ("[A] probate court has discretion to require notice[.]").[11] The evidence provided by Ignacio at the Bill of Review trial calling into question the date of Alejandro's death was sufficient for the trial court to determine it was error for Ignacio not to have been a participant at the hearing in the Alejandro Estate case. The trial court determined that was especially true considering the "adjudicated" date of death from its judgment in the Alejandro Estate case was relied upon by Miramontes in the Interpleader case to deprive Ignacio of any right to participate in those proceedings to obtain what he alleges is his right to $1.5 million of the proceeds under the Policy.

Consistent with section 51.001(b) of the Estates Code and relevant case law, we find it was within the discretion of the trial court to require Ignacio to be notified regarding the proceedings in the Alejandro Estate case since the scope of relief requested in the application and the substance of the hearing addressed contested issues regarding Alejandro's date of death. *See Wojcik*, 97 S.W.3d at 337 ("[A] probate court has discretion to require notice[.]"). Accordingly, we find the trial court did not commit a clear abuse of discretion when it determined that lack of notice on Ignacio in those proceedings resulted in substantial error in the judgment on the Alejandro Estate case, and thus warranted relief by statutory bill of review. *See Valdez*, 465 S.W.3d at 226; *Chavez*, 2014 WL 5343231, at *1 n.1, *5.

[11] In *Wojcik*, the probate court did not require that all the will beneficiaries in a will contest be provided notice in the case. 97 S.W.3d at 336-37. It later granted summary judgment in favor of the decedent's estate on the grounds that the will beneficiaries were indispensable parties to the action under rule 39 regarding joinder of parties, and failure to make all the will beneficiaries parties within the two-year limitations deadline for will contests warranted dismissal of the case. *Id.* at 336. The Dallas court of appeals reversed, holding rule 39 was inapplicable to the case because it directly contravened the Probate Code's provisions regarding joinder and notice. *Id.* at 337-38; *but see Ablon*, 457 S.W.3d at 614 (holding rule 39 applied to a trust proceeding where nothing in the Probate Code or Trusts Code conflicted with the requirements for indispensable parties under rule 39). *Wojcik* is distinguishable from the case at hand because (a) the trial court in *Wojcik* was confined to the limits of who must be made a party in a will contest contained within the Probate Code; (b) the present case involves a trial court's determination under a statutory bill of review on whether it committed substantial error on a matter within its discretion, and (c) this case does not involve the mandatory joinder of parties, but rather whether notice should have been provided to Ignacio under Estates Code section 51.001(b).

However, we note one important clarification from the argument asserted by Ignacio, where he states, "he was entitled to be joined as a party and served with process in the Alejandro Estate case but was not." We make no determination at this time whether rule 39 applies to Ignacio which would have mandated being joined as a party in the Alejandro Estate case, although we find no statute or case law which would expressly preclude such application. It is unclear from the probate court's order granting Ignacio's Bill of Review whether it believes Ignacio was an indispensable party under rule 39, or simply that it was error for him not to receive notice of the Alejandro Estate case proceedings considering the consequences of the judgment.[12] Our holding is limited to finding the trial court did not abuse its discretion in granting statutory bill of review in the Alejandro Estate case upon a showing of substantial error in the judgment for lack of notice of the proceedings to Ignacio.

Miramontes' first issue is overruled.

Issue Two: Did Ignacio Establish His Right to Bill of Review in Interpleader Case?

In her second issue, Miramontes asserts the probate court abused its discretion granting the bill of review in the Interpleader case because that matter was not set for hearing at the time it was considered by the probate court; and, even if properly considered, Ignacio failed to establish his right to equitable bill of review.

We disagree the probate court abused its discretion in granting the Bill of Review in the Interpleader case because it was based on the judgments in the Silvia Estate case and the Alejandro Estate case. Those judgments having been set aside, the effect is as if there had been no final judgment in either the Alejandro Estate case or the Silvia Estate case, and "place[s] the parties in

[12] The Bill of Review order states, "The Court . . . finds and is of the opinion that Plaintiff Ignacio Javier Fernandez Valles was neither served with process nor given proper notice of the proceedings in [the Silvia Estate case] and [the Alejandro Estate case]."

the position they occupied before the rendition of judgment." *P.V. Intern. Corp. v. Turner, Mason, & Solomon*, 700 S.W.2d 21, 22 (Tex.App.—Dallas 1985, no writ); *see also PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 272 (Tex. 2012)("The distinction between void and voidable judgments is critical when the time for a direct attack has expired. Before then, the distinction is less significant because—whether the judgment is void or voidable—the result is the same: the judgment is vacated.").[13] Accordingly, as Ignacio notes in his response, there was no appointment of an administrator for Silvia's estate since Karin Carson was appointed to that role via the judgment in the Silvia Estate case, which was set aside. Accordingly, there was no person duly authorized by law present on behalf of Silvia's estate at the hearing, nor had Silvia's estate made a valid appearance in the case. Any pleading filed by Ms. Carson in her purported capacity as the administrator of Silvia's estate was null and void, since the document granting her authority to act in such capacity was set aside. The effect of vacating the judgment appointing her as the administrator is as if she had never been appointed in the first instance, and she had no authority to take any action on behalf of Silvia's estate. *See P.V. Intern. Corp.*, 700 S.W.2d at 22.

Therefore, when the district court held the hearing on Miramontes' motion for summary judgment in the Interpleader case, it was effectively with only Miramontes present. Her adversary—Silvia's estate—had not been served with process, nor made any appearance in the case. This complete absence of service is a fundamental violation of due process owed to Silvia's

[13] The parties and the trial court seem to draw some distinction between a judgment that is "set aside" and one which is "vacated." For example, in the status conference where the parties and the trial court discussed various procedural issues regarding the case transfers and consolidation, counsel for Miramontes stated, "[S]o the order [in the Silvia Estate case] is not vacated; it's just set aside?" The trial court responded, "Right." Counsel for Miramontes then clarified, "Both orders [in the Silvia Estate case and the Alejandro Estate case] are set aside?" And the trial court responded, "Correct." However, there is no substantive distinction between setting aside a judgment and vacating a judgment; in either case, "the matter stands precisely as if there had been no judgment." *Ferguson v. Naylor*, 860 S.W.2d 123, 127 (Tex.App.—Amarillo 1993, writ denied)(citing *Sawyer v. Donley Cty. Hosp. Dist.*, 513 S.W.2d 106, 109 (Tex.App.—Amarillo 1974, no writ); *Stinnette v. Mauldin*, 251 S.W.2d 186, 220 (Tex.App.—Eastland 1952, writ ref'd n.r.e.); *Buttrill v. Occidental Life Ins. Co.*, 45 S.W.2d 636, 640 (Tex.App.—Dallas 1931, no writ)).

estate, and, by extension, the heirs thereto, which includes Ignacio. A judgment rendered in a case against a party who has neither been served nor received notice is "constitutionally infirm[.]" *PNS Stores, Inc.*, 379 S.W.3d at 272 (*citing Peralta*, 485 U.S. 80, 84 (1988)). In such a case, the judgment is void. *Id.* at 275; *see also Ins. Co. of State of Penn. v. Martinez*, 18 S.W.3d 844, 846 (Tex.App.—El Paso 2000, no pet.)("A judgment is void only when it is clear that the court rendering judgment had no jurisdiction over the parties or subject matter, no jurisdiction to render judgment, or no capacity to act as a court."). And, consistent with Texas jurisprudence, a court has "not only the power but the duty to vacate the inadvertent entry of a void judgment at any time, either during the term [of plenary power] or after the term, with or without a motion therefor." *Thomas v. Miller*, 906 S.W.2d 260, 262 (Tex.App.—Texarkana 1995, no writ)(*quoting Bridgman v. Moore*, 183 S.W.2d 705, 707 (Tex. 1944)); *see also Metropolitan Transit Authority v. Jackson*, 212 S.W.3d 797, 802 (Tex.App.—Houston [1st Dist.] 2006, pet. denied)("A trial court has no discretion to refuse to set aside a void judgment, but has the duty to do so at any time that such matter is brought to its attention."). Attacking a void judgment may be done directly, through a bill of review, or collaterally. *See PNS Stores, Inc.*, 379 S.W.3d at 271-72; *see also Thomas*, 906 S.W.2d at 262 ("[A]n attack [on a void judgment] may be made in any proceeding having as its general objective a finding that such judgment was void when entered.").

The probate court's order vacating the judgment in the Interpleader case because it "was based on the Sylvia [sic] Estate Judgment and the Alejandro Estate Judgment" is consistent with Texas law. Once it was brought to the probate court's attention the judgment in the Interpleader case was void because the Silvia estate was never properly served or notified of the hearing on Miramontes' summary judgment, the probate court was obligated to vacate it. *See Thomas*, 906 S.W.2d at 262. Additionally, because the Interpleader judgment was a summary judgment granted

solely on collateral estoppel and *res judicata* theories for issues which were never previously adjudicated—the Silvia Estate and Alejandro Estate judgments having been set aside—the judgment could not stand. *See Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 866 (Tex. 2010)(recognizing if a trial court sets aside an underlying judgment via bill of review for improper service, the underlying vacated judgment cannot serve as a basis for a subsequent claim of *res judicata*). A vacated judgment cannot serve as a basis for claim or issue preclusion because there has been no final determination on the merits of the claim or issue. *See id.*

Having determined the trial court had no discretion but to vacate the Interpleader case judgment as void, we need not decide Miramontes' argument regarding notice of the hearing on the Interpleader bill of review. *See* TEX.R.APP.P. 47.1. Miramontes was properly noticed and prepared to proceed on the Bills of Review in the Alejandro Estate case and the Silvia Estate case. Once the trial court determined the judgments in those cases should be set aside, the necessity to likewise vacate the Interpleader case judgment was apparent and mandatory. *See Thomas*, 906 S.W.2d at 262.

Miramontes' second issue is overruled.

CONCLUSION

We find the probate court did not commit a clear abuse of discretion in granting Ignacio's Bill of Review and setting aside the orders in the Alejandro Estate case and the Interpleader case. Accordingly, Miramontes has failed to prove an essential element required to warrant relief by writ of mandamus. For these reasons, Miramontes' petition is denied.

YVONNE T. RODRIGUEZ, Chief Justice

April 14, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.