

DISMISS and Opinion Filed October 21, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00328-CV

IN RE ESTATE OF JOHNETTA PATRICE MORGAN, DECEASED

**On Appeal from the Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-15-02866-3**

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Whitehill, and Justice Molberg
Opinion by Chief Justice Burns

Johnetta Patrice Morgan, deceased, was killed in a car accident. At the time of her death, she had three young children, each with a different father. The underlying probate case involves both the administration of her estate and wrongful death and survival claims. Ulysses Brown, as next friend of J.M., a minor, and Eric Clark, as next friend of J.M., a minor, (collectively appellants) appeal the following three trial court orders: (1) order granting the administrator's motion to approve settlement of the estate survival statute claim; (2) order granting the defendants' motion for approval of settlement; and (3) order denying appellants' motion for removal of the guardian ad litem. Because it appeared none of the orders constituted

a final judgment nor resolved a discreet probate issue, we questioned our jurisdiction over this appeal. At our request, the parties filed letter briefs addressing the jurisdictional issue.

Generally, this Court has jurisdiction only over final judgments or interlocutory orders as permitted by statute. *See Lehmann v. Har-Con*, 39 S.W.3d 191, 195 (Tex. 2001). However, a probate order on a discrete issue is appealable before the entire proceeding is concluded if an express statute declares that phase of the proceeding from which the order arises to be final and appealable or if the order disposes of all the parties or issues for which the particular part of the proceeding was brought. *See De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)).

In their letter brief, appellants assert that this Court has jurisdiction to review the appealed orders. As authority to review the guardian ad litem order, they cite to article V, section 6 of the Texas Constitution (defining jurisdiction of courts of appeals), section 22.221(b) of the Texas Government Code (defining authority of courts of appeal to issue writs of mandamus), and Texas Rule of Civil Procedure 173 (addressing guardian ad litem). *See* TEX. CONST. art. V, § 6; TEX. GOV'T CODE ANN. § 22.221(b); TEX. R. CIV. P. 173. None of the authorities relied upon supports this Court's appellate jurisdiction over an interlocutory order denying appellants' motion to remove the guardian ad litem.

As to the remaining two orders approving the settlement, appellants rely on section 32.001(c) of the estates code in addition to the above-listed authorities. *See* TEX. ESTATES CODE § 32.001(c). Section 32.001(c) provides that a final order issued by a probate court is appealable to the court of appeals. *See id.* Additionally, appellants cite to *Metropolitan Cas. Ins. Co. v. Foster*, 226 S.W.3d 597 (Tex. App.—Houston [1st Dist. 2007, no pet.) as authority that an order approving a settlement is reviewable without a separate final judgment. Unlike the order in *Foster*, however, the order here does not constitute a final judgment because it expressly states the trial court “will enter a Final Judgment in this case in accordance with the approved settlement.” This language renders both section 32.001(c) and *Foster* inapplicable to this case.

The clerk’s record does not contain a final judgment and appellants have not provided any authority demonstrating this Court’s jurisdiction to review the appealed orders. Accordingly, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Robert D. Burns, III/
ROBERT D. BURNS, III
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN RE ESTATE OF JOHNETTA
PATRICE MORGAN, DECEASED

No. 05-20-00328-CV

On Appeal from the Probate Court
No. 3, Dallas County, Texas
Trial Court Cause No. PR-15-02866-
3.

Opinion delivered by Chief Justice
Burns. Justices Whitehill and
Molberg participating.

In accordance with this Court's opinion of this date, the appeal is
DISMISSED.

It is **ORDERED** that appellees CARRUTHERS LANDSCAPE
MANAGEMENT, INC. AND CARLOS SANCHEZ recover their costs of this
appeal from appellants ULYSSES BROWN, AS NEXT FRIEND OF J.M., A
MINOR, AND ERIC CLARK, AS NEXT FRIEND OF J.M., A MINOR.

Judgment entered October 21, 2020