



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

No. 05-22-00499-CV

IN THE ESTATE OF CHRISTOPHER J. MERLO, DECEASED

**On Appeal from the Probate Court No. 2
Dallas County, Texas
Trial Court Cause No. PR-18-03799-2**

MEMORANDUM OPINION

Before Justices Myers, Carlyle, and Goldstein
Opinion by Justice Myers

This appeal challenges the trial court's interlocutory order appointing a guardian ad litem to represent appellant's interests in connection with a pending action concerning appellant's father's estate. It was filed "out of an abundance of caution" as appellant was "unclear whether the order" was "reviewable by [] appeal or by mandamus."¹

Unlike a final judgment that disposes of all parties and claims, not every interlocutory order is appealable. *See Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992) (orig. proceeding). An interlocutory probate order is appealable only if a statute expressly declares the order to be final and appealable or

¹ Appellant has since filed a petition for writ of mandamus, which was docketed as appellate cause number 05-22-00645-CV.

the order is “sufficiently final,” that is, the order adjudicates a substantial right and disposes of all issues and parties in a particular proceeding such that severance would be appropriate. *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)). An interlocutory order not reviewable by appeal may be reviewed by mandamus under appropriate circumstances. *See In re D. Wilson Constr. Co.*, 196 S.W.3d 774, 780 (Tex. 2006).

The order here was entered sua sponte and without stating any grounds, but it appeared to appellant the guardian ad litem might have been appointed under section 1152.001 of the estates code, and that section authorized the appeal. *See* TEX. EST. CODE ANN. § 1152.001. Section 1152.001, found in estates code title 3 concerning guardianships and “related proceedings,” provides that “[p]ending an appeal from an order or judgment appointing a guardian, the appointee shall continue to: (1) act as guardian; and (2) prosecute a pending suit in favor of the guardianship.” *Id.*

Because section 1152.001 concerns orders appointing a guardian, not a guardian ad litem,² and appeared inapplicable,³ we directed appellant to file a

² The terms “guardian” and “guardian ad litem” are not synonymous. As used in section 1152.001, “guardian means a person appointed as a: (1) guardian under Subchapter D, Chapter 1101 (footnote omitted); (2) successor guardian; or (3) temporary guardian.” *See* EST. CODE §§ 1002.001 (applicability of definitions), 1002.012 (defining guardian). “Guardian ad litem,” as defined by the estates code, is “a person appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.” *See id.* § 1002.013.

³ Additionally, section 1152.001 does not “expressly declare” an interlocutory order rendered in a guardianship or “related” proceeding to be final for purposes of appeal. *See De Ayala*, 193 S.W.3d at 578; *compare* EST. CODE § 1152.001 *with* § 202.202 (providing that judgment in proceeding to declare heirship is final and appealable) and § 356.556(c) (providing that, in proceedings concerning the sale of estate real property, order approving or disapproving of report informing court of successful bid or contract for sale has effect of final judgment and is appealable).

jurisdictional letter brief. Although she complied, she cites no persuasive authority in support. And, our own research has failed to find any. Accordingly, on the record before us, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a); *De Ayala*, 193 S.W.3d at 578.

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/Lana Myers//

LANA MYERS
JUSTICE



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

JUDGMENT

IN THE ESTATE OF
CHRISTOPHER J. MERLO,
DECEASED

No. 05-22-00499-CV

On Appeal from the Probate Court
No. 2, Dallas County, Texas
Trial Court Cause No. PR-18-03799-
2.

Opinion delivered by Justice Myers,
Justices Carlyle and Goldstein
participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

We **ORDER** that appellees Don D. Ford, III and Independent Executor Mark Merlo recover their costs, if any, of this appeal from appellant Kendall Merlo.

Judgment entered this 9th day of August, 2022.