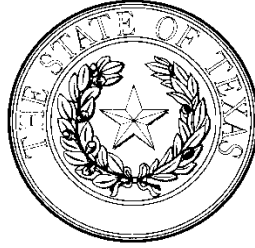


Issued on October 20, 2011.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-10-00294-CV

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**MITCHELL RYDER, Appellant**

**V.**

**LESLIE NORDAN HUDSON RYDER, ANITA SPEIER, GUARDIAN OF  
THE PERSON AND ESTATE OF LESLIE HUDSON RYDER, Appellee**

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**On Appeal from the 247th Judicial District Court  
Harris County, Texas  
Trial Court Case No. 2008-49617**

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**MEMORANDUM OPINION**

On January 8, 2010, the trial court signed a final decree of divorce that dissolved the marriage of appellant, Mitchell Ryder, and appellee, Leslie Nordan

Hudson Ryder.<sup>1</sup> Mr. Ryder died intestate on February 24, 2010, while his motion for a new trial was pending. On March 9, 2010, Ryder's former attorney of record, Joe Alfred Izen, Jr., filed a Suggestion of Death notifying the trial court of appellant's passing.<sup>2</sup> After Mr. Ryder's motion for new trial was overruled by operation of law, Izen filed a notice of appeal in appellate cause number 01-10-00294-CV, purportedly on Mr. Ryder's behalf, in which he sought review of the January 8, 2010 divorce decree.

This Court requested that Izen provide us with supplemental briefing and/or documentation that was sufficient to demonstrate that: (1) Izen was authorized to file the April 7, 2010 notice of appeal in appellate cause number 01-10-00294-CV on behalf of appellant, his deceased client, and (2) appellant's death has not rendered this appeal moot. When Izen did not respond, the Clerk of the Court notified the parties that unless Izen responded to the previous order within ten days, the appeal could be dismissed for want of jurisdiction. *See* TEX. R. APP. P.

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<sup>1</sup> Leslie Ryder has been confined to a mental hospital for several years. Anita Speier, the guardian of Ms. Ryder's person and estate, is litigating this matter on Ms. Ryder's behalf.

<sup>2</sup> We are referring to Izen as Mr. Ryder's "former" attorney because the attorney-client relationship terminated upon Mr. Ryder's death. *See* *Murphy v. Murphy*, 21 S.W.3d 797, 798 (Tex. App.—Houston [1st Dist.] 2000, no pet.) (stating that "it is well established that an attorney-client relationship terminates upon the death of the client").

42.3. Izen responded three days later. In his response Izen contends that he had the authority to file the notice of appeal on Mr. Ryder's behalf because he and Mr. Ryder had spoken about the possibility of an appeal, and Mr. Ryder had authorized him to pursue an appeal in the event his motion for new trial was denied. Izen attached an affidavit attesting to these facts.<sup>3</sup>

Texas Rule of Appellate Procedure 7.1(a)(1) provides that a civil appeal may proceed upon the death of the appellant. *See* TEX. R. APP. P. 7.1(a)(1) (“If a party to a civil case dies after the trial court renders judgment but before the case has been finally disposed of on appeal, the appeal may be perfected, and the appellate court will proceed to adjudicate the appeal as if all parties were alive. . .”) Neither Mr. Ryder, individually, nor his estate, however, is a proper party to this appeal. *See Casillas v. Cano*, 79 S.W.3d 587, 590 (Tex. App.—Corpus Christi 2002, order, no pet.) (stating decedent's estate is not proper party to appeal); *Armes v. Thompson*, 222 S.W.3d 79, 83–84 (Tex. App.—Eastland 2006, no pet.) (holding deceased person does not have standing to file suit on their own behalf). Accordingly, in order to proceed with an appeal—or in this case, perfect the appeal—the deceased party's heir must prosecute the appeal on behalf of the

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<sup>3</sup> Izen also requested additional time to procure affidavits from several of Mr. Ryder's friends and acquaintances, all of whom would attest to the fact that Mr. Ryder authorized Izen to file and pursue this appeal.

decedent or the administrator or the executor must prosecute the appeal on the behalf of the deceased party's estate. *See Casillas*, 79 S.W.3d at 591.

The only notice of appeal that has been filed in this case is the April 7, 2010 notice of appeal that Izen filed on behalf of his deceased former client, Mr. Ryder, who, as previously discussed, is not a proper party to this appeal. Izen does not claim to be a proper party to this appeal (i.e., an administrator or an executor of Mr. Ryder's estate, or Mr. Ryder's heir), nor does he claim to represent any such party. As such, the record contains no timely notice of appeal filed by a representative of Mr. Ryder's estate or one of Mr. Ryder's heirs.

Accordingly, we dismiss the appeal for want of jurisdiction. We dismiss any other pending motions as moot.

**PER CURIAM**

Panel consists of Justices Jennings, Sharp and Brown.