Dismissed and Memorandum Opinion filed September 16, 2010

In The

Fourteenth Court of Appeals

NO. 14-07-00675-CV
NO. 14-08-00250-CV

BARBARA YOUNGS SETTLE, Appellant

V.

JOHN F. ROBERT, INDEPENDENT EXECUTOR OF THE ESTATE OF MAY YOUNGS, DECEASED, Appellee

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On Appeal from the Probate Court No 1
Harris County, Texas
Trial Court Cause No. 301,383-403

NO. 14-09-00566-CV

BARBARA YOUNGS SETTLE, Appellant

V.

JOHN F. ROBERT, INDEPENDENT EXECUTOR OF THE ESTATE OF MAY YOUNGS, DECEASED, Appellee

On Appeal from the Probate Court No 2
Harris County, Texas
Trial Court Cause No. 301,383-403

M E M O R A N D U M O P I N I O N

Appellant attempts to appeal four orders issued by the Probate Court. In cause number 14-07-00675-CV, appellant complains of an "Order Clarifying Judgment Entered June 28, 2004," which was signed July 17, 2007. In cause number 14-08-00250-CV, she complains of a permanent injunction signed April 1, 2008. In cause number 14-09-00566-CV, she complains of two orders signed May 26, 2009, an "Order Denying Motion to Remove Independent Executor and Abating Motion to Compel Accounting," and an "Order Denying Emergency Motion to Strike Request for Sanctions and Motion to Withdraw Injunction and Award Defendant Statutory Sanction Pursuant to CPRC 65." Because we lack jurisdiction over appellant's appeals, we dismiss the appeals for want of jurisdiction.

Background

In 1966, appellant and her mother, May T. Youngs, jointly purchased a home located at 22 S. Wynden Drive in Houston, Texas (the "Property"). In November, 1988, due to Youngs' failing health, appellant's daughter, Maggie Choice, was appointed permanent guardian of Youngs' estate. Among the assets of the estate was the Property. On August 11, 1989, Choice sued appellant for, among other things, partition of the Property. The trial court determined that the Property was not subject to partition in kind. That decision was appealed and this court affirmed the trial court's judgment on November 10, 1993. *Youngs v. Choice*, 868 S.W.2d 850 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

Under Youngs' will, her undivided one-half interest in the Property was devised to appellant's five children. On June 28, 2004, the probate court signed an order finding the

Property was not susceptible to partition in kind and ordering appellee, the independent executor, to sell the Property, and to return the proceeds to the court to be partitioned among appellant and her children. In 2007, appellee negotiated a sale for $2.55 million, but appellant, who was living on the Property at the time, rejected the sale and refused to vacate the Property. Appellee sought an order from the probate court clarifying his authority to sell the house. On July 17, 2007, the probate court signed an "Order Clarifying Judgment Entered June 28, 2004," which appellant appealed in cause number 14-07-675-CV. Because of the pending appeals and appellant's refusal to vacate the property, the title company refused to insure the title until the executor obtained a permanent injunction against appellant enjoining her from filing any claims, suits, or lis pendens against appellee, the title company, or the buyer. The permanent injunction was entered April 1, 2008, and has been appealed by appellant in cause number 14-08-00250-CV.

In appellate cause number 14-09-00566-CV, appellant attempts to appeal two orders: (1) an order denying her motion to strike a request for sanctions and a motion to withdraw injunction, and (2) an order denying her motion to remove the independent executor and abating the motion to compel accounting.

Interlocutory Orders

Generally, appeals may be taken only from final judgments. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Whether the appellate court has jurisdiction over this interlocutory appeal depends on several factors. Probate proceedings give rise to a recognized exception to the general rule that only final judgments are appealable because multiple judgments may be rendered on discrete issues before the entire probate proceeding is concluded. *See Brittingham-Sada de Ayala*, 193 S.W.3d 575, 578 (Tex. 2006). However, not all probate orders are appealable. *Id.* Determining whether sufficient attributes of finality exist to confer appellate jurisdiction over an order arising from a probate proceeding depends on whether the order resulted from the adjudication of a substantial right or disposed of all issues in a particular phase of the proceeding. *Id.*

The supreme court has adopted the following standard to determine whether an order in a probate matter is appealable:

> If there is an express statute, such as the one for the complete heirship judgment, declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

Crowson v. Wakeham, 897 S.W.2d 779, 783 (Tex. 1995).

Cause number 14-07-00675-CV

In cause number 14-07-00675-CV, appellant attempts to appeal an order clarifying the judgment entered June 28, 2004. There is no relevant rule or statute that makes an order clarifying a previous order appealable. Further, the order does not dispose of all parties to the underlying suit. The proceeding of which this order may logically be considered a part contains pleadings that raise issues not disposed of by the order. Accordingly, the order clarifying the previous judgment is not a final, appealable order. *See* Tex. Prob. Code Ann. § 5(g) (Vernon 2003) ("All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of appeals."). *Crowson v. Wakeham*, 897 S.W.2d at 783.[1]

Cause number 14-09-00566-CV

In this case, there is no relevant rule or statute that makes an order denying an emergency motion to strike request for sanctions and motion to withdraw injunction appealable, nor is there a rule or statute that makes an order denying a motion to remove independent executor appealable. Further, the orders in cause number 14-09-00566-CV do not dispose of all parties to the underlying suit. The proceeding of which this order may logically be considered a part contains pleadings that raise issues not disposed of by the order. Accordingly, these orders are interlocutory, and not appealable. *See* Tex. Prop.

[1] Texas Probate Code section 5(g) has been recodified, effective January 1, 2014, as section 32.001 of the Texas Estate Code.

Code Ann. *5(g); DeAyala v. Mackie*, 193 S.W.3d 575, 579 (Tex. 2006) (order on motion to remove executor is not final, appealable order.); *Crowson v. Wakeham*, 897 S.W.2d at 783.

Permanent Injunction

In cause number 14-08-00250-CV, the trial court entered a permanent injunction enjoining appellant from "filing any claims, suits, or lis pendens against the Executor, the title company, and the buyer regarding the status of the title to or interfering with the Court ordered sale of the Property." On March 26, 2010, the property was sold.

A case becomes moot when there ceases to be an actual controversy between the parties. *In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 737 (Tex. 2005). Deciding the merits of a moot case is to render an advisory opinion. *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993). Under the separation of powers doctrine, we have no authority to issue advisory opinions. Tex. Const. art. II, § 1; *Brooks v. Northglen Ass'n*, 141 S .W.3d 158, 164 (Tex. 2004).

With respect to the permanent injunction, when appellee sold the property, there ceased to be a live controversy between the parties. Therefore, the appeal of the permanent injunction is moot. *See Tieken v. Midwestern St. Univ*., 912 S.W.2d 878, 887 (Tex. App.—Fort Worth 1995, no writ) ("Where there has ceased to be a controversy between the litigating parties due to events occurring after judgment has been rendered by the trial court, the decision of an appellate court would be a mere academic exercise and the court may not decide the appeal."). This court has no jurisdiction.

Accordingly, we dismiss appellant's appeals.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Seymore.