Petition for Permission to Appeal Denied and Memorandum Opinion filed April 6, 2017.

In The

Fourteenth Court of Appeals

NO. 14-17-00144-CV

RAUL AYALA, JR., Appellant

V.

MARTHA GARZA, SANDRA WEID, and GEORGE LOPEZ, Appellees

On Appeal from the Probate Court No. 2
Harris County, Texas
Trial Court Cause No. 409,268-401

MEMORANDUM OPINION

Appellant Raul Ayala, Jr. (Raul Jr.) is the brother of Appellees Martha Garza and Sandra Weid. Their mother Irma Ayala (Mother) died intestate in 2000. Their father Raul H. Ayala (Father) died on March 26, 2011.

With regard to Mother's Estate, the parties executed a Family Settlement Agreement on March 22, 2001 providing that Mother's ownership of two parcels of real property would pass to Raul Jr. Several months later, on November 6, 2001, the probate court signed a Judgment Declaring Heirship as to Mother's Estate that was inconsistent

with the Family Settlement Agreement because it provided that Mother's ownership in the two parcels of real property passed to Father, not Raul Jr. Although the Family Settlement Agreement was executed before the Judgment Declaring Heirship, it was not incorporated into that judgment. The Family Settlement Agreement was filed on November 26, 2001, but no party filed a motion to modify the Judgment Declaring Heirship to conform to the Family Settlement Agreement, and no party appealed the Judgment Declaring Heirship.

At issue in this litigation is whether the distribution of Mother's estate was controlled by the Judgment Declaring Heirship or by the earlier Family Settlement Agreement. The trial court decided this question in an "Amended Order Granting Plaintiffs' Motion for Traditional Summary Judgment" (Amended Order), in which it ruled that the Judgment Declaring Heirship, rather than the Family Settlement Agreement, controlled the distribution of Mother's Estate assets.

Pending before this court is Raul Ayala, Jr.'s Petition for Permissive Interlocutory Appeal asking this court to accept his appeal of the Amended Order. To invoke our discretion to accept a permissive appeal from an interlocutory order that would not otherwise be appealable, the requesting party must establish that (1) the order to be appealed involves "a controlling question of law as to which there is a substantial ground for difference of opinion", and (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation. Tex. Civ. Prac. & Rem. Code Ann. § 51.014(d); Tex. R. App. P. 28.3(e)(4); Tex. R. Civ. P. 168.

The Amended Order identifies the controlling questions of law as:

> (1) the Judgment Declaring Heirship dated November 6, 2001 controlled the distribution of Irma Ayala's estate; and (2) the Family Settlement Agreement dated March 22, 2001 did NOT control the distribution of Irma Ayala's estate.

Our jurisdiction to grant a permissive appeal is established if we conclude a "substantial ground for difference of opinion" exists as to the controlling questions of law as stated in the order sought to be appealed. *See Undavia v. Avant Med. Group, P.A.*, 468 S.W.3d 629, 632 (Tex. App.—Houston [14th Dist.] 2015, no pet.). "Substantial grounds for disagreement exist when the question presented to the court is novel or difficult, when controlling circuit law is doubtful, when controlling circuit law is in disagreement with other courts of appeals, and when there simply is little authority upon which the district court can rely." *Gulf Coast Asphalt Co., L.L.C. v. Lloyd*, 457 S.W.3d 539, 545 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *see also Undavia*, 468 S.W.3d at 632. That a trial court has decided a question of law on summary judgment, however, does not necessarily mean a substantial ground for disagreement exists. *See Gulf Coast*, 457 S.W.3d at 545.

We conclude no substantial ground for difference of opinion exists on the controlling questions of law stated in the Amended Order. *Cf. Womack v. Holley*, No. 14-94-00565-CV, 1995 WL 613068, at *1 (Tex. App.—Houston [14th Dist.] Oct. 19, 1995, writ denied) (holding that appellant could not challenge final probate court judgment she did not timely appeal); *see also Envtl. Procedures, Inc. v. Guidry*, 282 S.W.3d 602, 635 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (refusing to enforce a rule 11 agreement that was not incorporated into judgment or decree of trial court). Accordingly, we deny the petition and dismiss the appeal. Tex. Civ. Prac. & Rem. Code § 51.014(d)(1); Tex. R. App. P. 42.3(a).

PER CURIAM

Panel consists of Justices Christopher, Busby, and Jewell.