



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00065-CV

IN THE ESTATE OF Steven Desmer **LAMBECK**, Deceased

From the County Court, Wilson County, Texas
Trial Court No. PR-07450
Honorable Kathleen S. Stone, Judge Presiding¹

Opinion by: Rebeca C. Martinez, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: October 18, 2017

AFFIRMED

Helen Lambeck appeals the probate court's order granting the dependent administrator's application for authority to assign a wrongful death cause of action. Helen contends the probate court was without jurisdiction to grant the application. Alternatively, Helen contends the probate court abused its discretion in granting the application. James House, the dependent administrator, challenges this court's jurisdiction to consider this appeal and Helen's standing to bring the appeal. House also contends the probate court properly granted his application. We affirm the probate court's order.

¹ Sitting by assignment. *See* TEX. GOV'T CODE § 25.0022.

BACKGROUND

Steven Desmer Lambeck and his wife Ramona Lambeck were murdered in September of 2012. Steven's will was admitted to probate and his father, Arnold Lambeck, was appointed as the executor of Steven's estate. In September of 2014, Arnold and the executrix of Ramona's estate filed a wrongful death lawsuit against Steven's sons,² who were the beneficiaries under Steven's will, seeking damages and to impose a constructive trust on their inheritance and on any death benefits or life insurance proceeds they might be entitled to receive. The lawsuit alleged both sons were involved in Steven's and Ramona's murders.

Arnold died in January of 2016, and House was appointed to serve as dependent administrator of Steven's estate in October of 2016. In December of 2016, House filed an application to assign the wrongful death cause of action to Steven's mother, Helen, and to the independent executrix of Ramona's estate. In the application, House stated he sought to assign the cause of action because: (1) none of the beneficiaries of the estate benefit from the claims; (2) Steven's other "potential" heirs are adequately represented by other plaintiffs; and (3) continued pursuit of the claims on behalf of Steven's estate would cause a waste of the estate assets.

Helen filed a response to the application asserting the probate court lacked jurisdiction "to rule on a matter affecting the parties of a matter pending in another court." Helen further asserted the dependent administrator is mandated by law to prosecute the wrongful death cause of action.

The probate court held a hearing on the application. At the hearing, House's attorney noted over \$175,000 in estate assets had been spent pursuing the wrongful death lawsuit. House's attorney requested that the application be granted so that the estate is able to stop spending attorney's fees "for something that is probably not going to ever benefit this estate." At the

² Ramona was not the mother of Steven's sons.

conclusion of the hearing, the probate court granted the application and gave House the authority to assign the wrongful death claim to Helen. Helen appeals.

APPELLATE JURISDICTION: FINALITY OF ORDER

House contends this court lacks jurisdiction to consider this appeal because the probate court's order is not a final order.

“Probate proceedings are an exception to the ‘one final judgment’ rule.” *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006). In probate proceedings, multiple final, appealable judgments can be rendered on discrete issues. *Id.* A probate court's order that disposes of “all parties or issues in a particular phase of the proceedings” is considered final. *Id.* at 579

In this case, the assignment of the cause of action was a “particular phase of the [probate] proceedings,” and the probate court's order granting House's application and allowing him to assign the cause of action disposed of “all parties and issues in [that] particular phase of the proceedings.” *Id.* Accordingly, the probate court's order was final, and we have jurisdiction to consider this appeal.

HELEN'S STANDING

House also contends Helen lacks standing or a justiciable interest to appeal the probate court's order because she was not a party to the probate proceedings and was not a person interested in the estate.

Section 55.001 of the Texas Estates Code allows any person interested in an estate to file written opposition regarding an issue in the probate proceeding. TEX. EST. CODE ANN. § 55.001 (West 2014). The term “person interested” means an heir or any other person having a property right in an estate being administered. *Id.* at § 22.018(1).

In his application, House admits Helen is a “potential statutory heir.” This admission is likely based on the fact that equity will impress a constructive trust upon any estate assets a

murderer would receive through his victim's will. *Gordy v. Alexander*, 550 S.W.2d 146, 149 (Tex. Civ. App.—Amarillo 1977, writ ref'd n.r.e.). In this case, if Steven's sons are found to have murdered Steven, a constructive trust would be impressed upon any estate assets they would otherwise receive. Since Helen would be a beneficiary of such a constructive trust,³ she has a contingent right to the estate assets and, therefore, a justiciable interest in whether the estate should be permitted to assign the wrongful death cause of action. *See id.*; *see also Logan v. Thomason*, 202 S.W.2d 212, 215 (Tex. 1947) (noting interest can be prospective or contingent); *In re Estate of Forister*, 421 S.W.3d 175, 178 (Tex. App.—San Antonio 2013, pet. denied) (quoting *Logan*). With regard to Helen's standing to appeal, because Helen had a sufficient interest to oppose the application and she filed an opposition to the application which the probate court considered at the hearing, we conclude she likewise has standing to appeal the probate court's order granting the application. *See Witte v. Witte*, No. 03-08-00592-CV, 2010 WL 392316, at *1 (Tex. App.—Austin Feb. 3, 2010, pet. filed) (mem. op.) (holding person with sufficient interest to participate in guardianship proceedings and contest reimbursement of guardian's attorney's fees had standing to appeal trial court's order to reimburse the fees).

PROBATE COURT'S JURISDICTION

In her first issue, Helen contends the probate court, as a constitutional county court, did not have jurisdiction over the wrongful death cause of action which was pending in district court. The probate court, however, did not exercise jurisdiction over the wrongful death cause of action. Instead, the probate court exercised jurisdiction over the dependent administrator's authority to assign that cause of action. In a dependent administration, the administrator generally must seek the probate court's permission to act, and only the probate court has the jurisdiction to grant such

³ Based on the record, Helen appears to be Steven's only other surviving heir.

permission. *See Eastland v. Eastland*, 273 S.W.3d 815, 821 (Tex. App.—Houston [14th Dist.] 2008, no pet.); TEX. EST. CODE ANN. § 351.051. In this case, House, as a dependent administrator, applied for permission to assign the wrongful death cause of action, and the probate court was the only court with jurisdiction to grant House permission to take that action. Accordingly, we overrule Helen’s first issue.

ASSIGNMENT OF CAUSE OF ACTION

In her second issue, Helen contends the probate court abused its discretion in granting House’s application because the Texas Wrongful Death Statute required him to prosecute the claim. In support of her second issue, Helen cites section 71.004(c) of the Texas Civil Practice and Remedies Code which states:

If none of the individuals entitled to bring [a wrongful death] action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals.

TEX. CIV. PRAC. & REM. CODE ANN. § 71.004(c) (West 2008). Helen argues the statute’s use of the words “shall” and “prosecute” requires House to prosecute or pursue the wrongful death claim until a judgment is entered. We disagree.

In Texas, causes of action are generally considered freely assignable. *See PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P’ship*, 146 S.W.3d 79, 106 (Tex. 2004) (“choses in action are now generally considered freely alienable”); *Am. Homeowner Pres. Fund, LP v. Pirkle*, 475 S.W.3d 507, 517 (Tex. App.—Fort Worth 2015, pet. denied) (“We start with the general rule that causes of action are freely assignable in Texas.”); *Concierge Nursing Ctrs., Inc. v. Antex Roofing, Inc.*, 433 S.W.3d 37, 46 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (“As a general rule, causes of action are freely assignable.”); *City of San Antonio v. Valemas, Inc.*, No. 04-11-00768-CV, 2012 WL 2126932, at *8 (Tex. App.—San Antonio June 13, 2012, no pet.) (“Absent specific

circumstances not present in this case, causes of action in Texas are freely assignable.”). Although section 71.004 limits who can file a wrongful death action, the statute does not prevent the assignment of such a claim after the lawsuit is filed. *See, e.g. Davis v. Tobacco Co. of Products*, 1997 WL 33147703, at *2 (W.D. Tex. May 21, 1997) (“Assignment of a wrongful death claim must take place after suit is filed by the statutorily designated beneficiaries.”); *Graffagnino v. Fibreboard Corp.*, 781 F.2d 1111, 1112 (5th Cir. 1986) (noting wrongful death claim can be assigned after the lawsuit has been filed); *Lowe v. Employers Cas. Co.*, 479 S.W.2d 383, 389-90 (Tex. App.—Fort Worth 1972, no writ) (recognizing wrongful death claim can be assigned after lawsuit is filed). Because the wrongful death claim was pending, and freely assignable under Texas law, the probate court did not abuse its discretion in authorizing House to assign the cause of action.

IMPOSITION OF CONSTRUCTIVE TRUST

In her third issue, Helen contends the probate court abused its discretion in granting House the authority to “abandon” the wrongful death claim because determining whether Steven’s sons participated in Steven’s death is a condition precedent to the final distribution of Steven’s estate.

Initially, we note the probate court’s order did not grant House the authority to “abandon” the claim. Instead, the order gave House the authority to assign the claim to Helen. In addition, the Texas Supreme Court has explained the effect of a constructive trust under these circumstances as follows:

Texas courts have taken the position that the law will impose a constructive trust upon the property of a deceased which passed either by inheritance or by will if the beneficiary wilfully and wrongfully caused the death of the deceased. The trust is a creature of equity and does not contravene constitutional and statutory prohibitions against forfeiture because title to the property does actually pass to the killer. The trust operates to transfer the equitable title to the trust beneficiaries.

Bounds v. Caudle, 560 S.W.2d 925, 928 (Tex. 1977) (internal citations omitted). Although the foregoing law explains the effect a constructive trust will have on title to the estate's property, the law has no effect until the constructive trust issue is proven and decided. *Estate of Huffhines*, No. 02-15-00293-CV, 2016 WL 1714171, at *7 (Tex. App.—Fort Worth Apr. 28, 2016, pet. denied) (noting bare right to move for a constructive trust does not equate to a judicial conclusion that a constructive trust is warranted). Furthermore, the law has no effect on a dependent administrator's ability to assign a wrongful death claim.

CONCLUSION

The probate court's order is affirmed.

Rebeca C. Martinez, Justice