



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-18-00390-CV

**IN THE ESTATE OF** Jose Alfredo **MENDOZA**, Deceased

From the County Court at Law, Starr County, Texas  
Trial Court No. PR-16041  
Honorable Romero Molina, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Karen Angelini, Justice  
Marialyn Barnard, Justice

Delivered and Filed: August 29, 2018

**DISMISSED**

In this probate matter, Appellants seek to appeal a partial summary judgment order. Because no final and appealable order has been entered in this phase of the probate proceeding, we dismiss this appeal for lack of appellate jurisdiction.

**Background**

Appellants initiated this litigation seeking declaratory judgment, construction of the decedent's will, and attorney's fees. Appellees filed a counterclaim for declaratory judgment, attorney's fees, and forfeiture of inheritance.

Appellees moved for partial summary judgment that Appellants are not beneficiaries and take nothing under the will. On March 19, 2018, the trial court entered an order granting Appellees' motion for partial summary judgment and ordering that Appellants take nothing under Article V

of the decedent's will. In addition, the March 19 order stated in paragraph 2: "All other issues in dispute between the Parties remain pending for adjudication."

On June 1, 2018, upon Appellants' request, the trial court entered an order modifying the March 19 order as follows:

It is therefore ORDERED that the paragraph numbered "2." [o]f the "Order Granting Will Defenders' Motion for Partial Summary Judgment," signed by the Court on March 19, 2018, is hereby stricken, and replaced with the following:

2. All other claims and issues in dispute between the Parties remain pending for adjudication.

Appellants then filed a notice of appeal in this court.

### **Discussion**

Generally, an appeal may be taken only from a final judgment. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). Although probate proceedings are an exception to the "one final judgment" rule, not every interlocutory order in a probate proceeding is appealable. *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006); *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995). To determine whether a probate order is final and appealable, we consider whether the order adjudicates a substantial right and whether it disposes of all issues in a particular phase of the proceeding. *De Ayala*, 193 S.W.3d at 578. An order that merely sets the stage for resolution of proceedings is interlocutory and not appealable. *Id.* at 579.

In this case, neither the original March 19 order nor the June 1 order modifying it disposes of all pending claims and issues. In fact, both orders expressly state they do not dispose of all pending claims and/or issues. Specifically, neither order resolves the parties' respective claims for attorney's fees incurred in this phase of the probate proceeding related to determining the beneficiaries of the decedent's will. *See Halbert v. Box*, No. 12-02-00342-CV, 2003 WL 21254918, at \*1 (Tex. App.—Tyler May 30, 2003, pet. denied) (mem. op.) (dismissing appeal

from partial summary judgment order that did not resolve claim for attorney's fees in probate proceeding). Finally, there is no order severing the partial summary judgment, and there is no statutory rule permitting immediate appeal from this type of order. Therefore, under the *Crowson/De Ayala* test, no final, appealable judgment has been entered in this phase of the probate proceeding, and we must dismiss this appeal for lack of jurisdiction.

**Conclusion**

This appeal is dismissed for lack of jurisdiction.

Sandee Bryan Marion, Chief Justice