Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-19-00477-CV

In the Matter of the **GUARDIANSHIP OF** Charles Inness **THRASH**,
an Incapacitated Person

From the Probate Court No. 1, Bexar County, Texas
Trial Court No. 2017-PC-2912
Honorable Oscar J. Kazen, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: July 15, 2020

DISMISSED FOR WANT OF JURISDICTION

In a guardianship proceeding, the trial court found Charles Inness Thrash lacked the capacity to care for himself, contract, or marry, and it appointed separate guardians of his estate and person. While Thrash was incapacitated, he married Laura Martinez, but the trial court annulled the marriage. Subsequently, Laura Martinez, her daughter Brittany, and attorney Philip M. Ross filed pleadings seeking relief for themselves and Thrash.

The trial court struck their pleadings, and Laura, Ross, and Thrash—putatively through a next friend—appeal.[1] Because no statute makes the order immediately appealable and the order striking the pleadings was merely interlocutory, we dismiss this appeal for want of jurisdiction.

[1] The appellants' amended notice of appeal lists more parties as appellants than those identified in Appellants' brief: Charles I. Thrash, by and through Billy Duncan as next friend; Philip M. Ross; and Laura A. Martinez-Thrash. The

BACKGROUND

Many of the facts underlying this case are set forth in two previous, related opinions in appeals numbered 04-19-00104-CV (capacity, guardianship) and 04-19-00236-CV (annulment). We repeat only a few of those facts here, and we recite additional facts pertinent to this appeal. In the guardianship case in Bexar County, on January 29, 2019, the trial court determined that Thrash was "totally without capacity to care for himself, . . . to contract, and to marry." It appointed Mary C. Werner as guardian of Thrash's person and Tonya M. Barina as guardian of Thrash's estate.[2]

A. Pleadings Filed

Over the next two months, Ross filed the following pleadings in the case:

Date	Title	For
30 Jan 2019	Notice of Appearance	Thrash
01 Feb 2019	Notice of Filing Letter to the Court Pursuant to Section 1202.054	Thrash
01 Feb 2019	Verified Motion for TRO and Temporary Injunction	Thrash
04 Feb 2019	Notice of Filing Affidavit	Thrash
25 Feb 2019	Objection to Order Denying Motion for TRO Order and Temporary Injunction and Request for Reconsideration	Laura, Brittany
07 Mar 2019	Second Amended Verified Motion for TRO, Temporary Injunction, and Permanent Injunction	Laura, Brittany
08 Mar 2019	Application for an Order for Spousal Support	Laura

guardians object to Duncan and Ross as appellants because neither was a party in the underlying proceeding when the trial court rendered its order. Given our disposition of this appeal, we need not, and do not, reach the guardians' objection regarding the proper appellants. *See* TEX. R. APP. P. 47.1.

[2] Despite the trial court's January 29, 2019 order, on February 2, 2019, Laura and Thrash obtained a marriage license from DeWitt County without advising the court or the guardians. On March 4, 2019, Laura and Thrash were married in a ceremony in DeWitt County. One week later, in an ancillary proceeding to the one underlying this appeal, Werner, as guardian of Thrash's person, joined by Barina, as guardian of Thrash's estate, petitioned to annul the marriage. After a hearing in the ancillary case, the trial court granted the petition and annulled the marriage. Laura and Brittany appealed the trial court's order, but this court affirmed the trial court's order annulling the marriage.

Date	Title	For
11 Mar 2019	Third Amended Verified motion to Remove Guardians	Laura, Brittany
16 Mar 2019	Verified Objection/Rebuttal to Report of Court Investigator	Laura, Brittany
21 Mar 2019	Supplement to Objection and Rebuttal to the Report of the Court Investigator	Laura, Brittany
22 Mar 2019	Motion for Independent Mental Examination and Appointment of Attorney Ad Litem	Laura, Brittany

B. Pleadings Struck

The guardians objected to these pleadings and moved to strike them "because they were filed by 'persons interested in the welfare of' Thrash without first complying with [section] 1055.003 of the Estates Code."

On April 9, 2019, after a hearing on the motion, the trial court granted the guardians' motion and struck the objected-to pleadings.[3]

On appeal, Appellants raise three issues. Before we address their issues, we first determine whether we have appellate jurisdiction.

APPELLATE JURISDICTION

Generally, "an appeal may be taken only from a final judgment." *Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001); *accord De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006). "Probate proceedings are an exception to the 'one final judgment' rule; in such cases, 'multiple judgments final for purposes of appeal can be rendered on certain discrete issues.'" *De Ayala*, 193 S.W.3d at 578 (quoting *Lehmann*, 39 S.W.3d at 192). "The need to review controlling, intermediate decisions before an error can harm later phases of the proceeding has been held to

[3] The guardians objected to eight other pleadings which the trial court also struck. In their brief, Appellants make a generalized complaint about the trial court's striking their pleadings, but they only list—and specifically challenge the trial court's ruling on—eleven of their nineteen struck pleadings.

justify modifying the 'one final judgment' rule." *Logan v. McDaniel*, 21 S.W.3d 683, 688 (Tex. App.—Austin 2000, pet. denied) (citing *Christensen v. Harkins*, 740 S.W.2d 69, 74 (Tex. App.—Fort Worth 1987, no writ); TEX. R. CIV. P. 301).

"Not every interlocutory order in a probate case is appealable, however, and determining whether an otherwise interlocutory probate order is final enough to qualify for appeal, has proved difficult." *De Ayala*, 193 S.W.3d at 578.

"If there is an express statute . . . declaring the phase of the probate proceedings to be final and appealable, that statute controls." *Id.* (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)).

But where no express statute controls, "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." *Id.* (quoting *Crowson*, 897 S.W.2d at 783); *accord Estate of Savana*, 529 S.W.3d 587, 591 (Tex. App.—Houston [14th Dist.] 2017, no pet.) ("If there is no express statute, a probate court order is final and appealable if it disposes of all parties or issues in a particular phase of the proceedings.").

STANDARD OF REVIEW

"Whether a court has subject-matter jurisdiction over a case is a question of law, which we review *de novo*." *City of Floresville v. Starnes Inv. Group, LLC*, 502 S.W.3d 859, 865 (Tex. App.—San Antonio 2016, no pet.); *accord Lueck v. State*, 325 S.W.3d 752, 756 (Tex. App.—Austin 2010, pet. denied) (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004)).

DISCUSSION

To determine our jurisdiction in this appeal, we begin with the parties' arguments.

A. Parties' Arguments

Appellants do not assert that any statute controls to make the trial court's order appealable. Instead, they argue that the trial court's April 9, 2019 order "is an appealable order in a probate proceeding because it strikes certain pleadings filed by the parties, which 'concluded a discrete phase of the guardianship proceedings.'" Citing *In re Guardianship of Benavides*, they assert that the trial court's striking their pleadings is like a trial court's decision on a Rule 12 motion—which concludes a discrete phase and is an appealable order. *See In re Guardianship of Benavides*, 403 S.W.3d 370, 374 (Tex. App.—San Antonio 2013, pet. denied).

The guardians disagree; they contend the trial court's April 9, 2019 order did not resolve the question of whether Appellants may intervene, it merely forces the appellants to move to intervene under the applicable statute. *See* TEX. ESTATES CODE ANN. § 1055.003; *In re Guardianship of Thrash*, No. 04-19-00104-CV, 2019 WL 6499225, at *4 (Tex. App.—San Antonio Dec. 4, 2019, pet. denied) (mem. op.)

B. No Controlling Statute

Neither Appellants nor the guardians argue that any statute expressly controls to make the trial court's order appealable, and we have found none. *Cf. Mueller v. Banks*, 302 S.W.2d 447, 448 (Tex. App.—Eastland 1957, writ ref'd) ("[N]o appeal lies from an order dismissing a petition in intervention or denying permission to intervene until after a final judgment has been rendered."); *In re C.M.R.*, No. 13-14-00618-CV, 2014 WL 6679522, at *1 (Tex. App.—Corpus Christi Nov. 25, 2014, no pet.) (mem. op.) ("We cannot find any statutory authority that allows a party to appeal from an interlocutory order that grants a petition for intervention or denies a motion to dismiss a petition in intervention."). We agree that none expressly controls, and thus we must determine

whether there were issues or parties not disposed of such that the order is interlocutory. *See De Ayala*, 193 S.W.3d at 578.

C. Distinguishing *Benavides*

To show the order concluded a discrete phase of the litigation, Appellants rely on *Benavides*, but it is readily distinguishable. *See Benavides*, 403 S.W.3d at 374. In *Benavides*, we noted that "[a]s a general rule, an order on a rule 12 motion is an interlocutory order that is not appealable until it is merged into a final judgment." *Id.* But there we determined that the challenged order was appealable because it "finally disposed of all issues raised in the rule 12 motion to show authority, and concluded a discrete phase of the guardianship proceedings." *Id.* (citing *Logan*, 21 S.W.3d at 688).

Unlike *Benavides*, Appellants' attempts to obtain relief remain unresolved. *Contra Logan*, 21 S.W.3d at 689 (requiring "an appealable order in a probate proceeding [to] adjudicate conclusively a controverted question or substantial right"). *Benavides* is inapt.

D. No Discrete Phase Concluded

Despite Appellants' arguments that the trial court's order striking their pleadings concluded a discrete phase, it did not. The stricken pleadings sought relief in the form of a temporary restraining order, a temporary injunction, a permanent injunction, removal of the guardians, a closing or settlement of the guardianship, spousal support for Laura, and a new mental examination for Thrash. But the trial court's April 9, 2019 order did not conclusively adjudicate any of these matters. *Contra id.* at 688.

Because no statute controls to make the order appealable, and the trial court's order striking the pleadings did not conclude a discrete phase of the guardianship proceeding, the order was interlocutory and not appealable. *Cf. id.* at 689 ("Because the Hays County order concluded a discrete phase of the guardianship proceeding, that order was final and appealable."); *In re*

Guardianship of Murphy, 1 S.W.3d 171, 173 (Tex. App.—Fort Worth 1999, no pet.) ("Because the transfer order at issue did not dispose of any parties or issues in any particular phase of the ward's guardianship proceeding, it is not final and appealable, and we lack jurisdiction to review it.").

We necessarily conclude we do not have appellate jurisdiction.

CONCLUSION

The trial court's order striking Laura's, Brittany's, and Ross's pleadings was not controlled by a statute to make it appealable. Further, the order did not conclude a discrete phase of the litigation; it was merely an interlocutory order and not subject to immediate appeal. Therefore, we dismiss this appeal for want of jurisdiction.

Patricia O. Alvarez, Justice