



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00079-CV

IN THE GUARDIANSHIP OF HELEN JILES

On Appeal from Probate Court No. 1
Tarrant County, Texas
Trial Court No. 2019-GD00025-1

Before Kerr, Pittman, and Birdwell, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Kemone Duane Rodgers, proceeding pro se, filed guardianship applications asking the probate court to appoint him as Helen Jiles’s temporary and permanent guardian. Shortly thereafter, the court signed an order appointing a licensed attorney as Jiles’s guardian ad litem to investigate whether Jiles was incapacitated and whether a guardianship was necessary. *See* Tex. Est. Code Ann. § 1102.001 (“Court-Initiated Investigation”). Rodgers filed a pro se notice of appeal complaining of the probate court’s refusal to consider his guardianship applications based on its “Standing Order Regarding Pro Se Applicants.”¹

We notified Rodgers of our concern that we lack jurisdiction over this appeal because the trial-court clerk had informed us that the trial judge had not signed an order in this case. We informed him that because it appeared that there was no final judgment or order subject to appeal, his notice of appeal was premature. *See* Tex. R. App. P. 26.1(a), 27.1(a). We further informed him that we would dismiss his appeal for want of jurisdiction unless he or any other party desiring to continue the appeal provided us with a signed copy of the order he wants to appeal. *See* Tex. R. App. P.

¹In pertinent part, the standing order states:

Under Texas law, individuals applying for . . . guardianships of the person or estate must be represented by a licensed attorney. This rule follows from the requirement that only a licensed attorney may represent the interests of third-party individuals or entities and follows case law that fiduciaries must be represented by an attorney.

42.3(a), 43.2(f), 44.3, 44.4(a)(2). In his response, Rodgers contends that this court has jurisdiction over his appeal because the probate court's "Standing Order Regarding Pro Se Applicants" is a final order appealable under estates code section 32.001(c). *See* Tex. Est. Code Ann. § 32.001(c) ("A final order issued by a probate court is appealable to the court of appeals.").

Generally, appeals may be taken only from final judgments, *see Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001), or interlocutory orders made appealable by statute, *see Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 352 (Tex. 2001). The estates code provides that in a guardianship proceeding, "[a] final order issued by a probate court is appealable to the court of appeals." Tex. Est. Code Ann. § 1022.001(c). A judgment or order is final if it disposes of every pending claim and party. *Lehmann*, 39 S.W.3d at 205. Appeals in probate-court proceedings, however, are an exception to the one-final-judgment rule. *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (op. on reh'g).

In probate cases, "multiple judgments final for purposes of appeal can be rendered on certain discrete issues." *Id.* (quoting *Lehmann*, 39 S.W.3d at 192). But not every interlocutory order in a probate case is appealable. *Id.* Factors to be considered include whether the order adjudicated a "substantial right" and whether "the order dispose[d] of all issues in the phase of the proceeding for which it was brought." *Id.* (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)). An order that "sets the stage for the resolution of all proceedings," but does not end a phase of the

proceedings, is interlocutory. *Id.* at 579; *see, e.g., In re Guardianship of Lattimore*, No. 05-14-01302-CV, 2015 WL 737035, at *2 (Tex. App.—Dallas Feb. 20, 2015, pet. dism'd) (mem. op.) (dismissing for lack of jurisdiction appeal from trial court's order dismissing guardianship application for lack of standing because the guardianship proceeding was still pending).

Here, neither the probate court's refusing to consider Rodgers's guardianship applications nor the probate court's standing order is a final judgment or order or an appealable interlocutory order. Thus, we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: May 30, 2019