



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-17-00077-CV

ESTATE OF WILMER GIDDENS, DECEASED

On Appeal from the County Court at Law
Bowie County, Texas
Trial Court No. 39387-CCL

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

After George Fisher was removed as independent executor of the Estate of Wilmer Giddens, deceased, (Wilmer's Estate), Troy Hornsby was appointed by the County Court at Law of Bowie County acting as the probate court (the probate court), to serve as dependent administrator of Wilmer's Estate (the Administrator). In an amended inventory, the Administrator verified that the claims and judgments against the Estate asserted by Heritage SNF, LP, d/b/a Heritage Plaza Nursing and Rehabilitation Center (Heritage) and the Estate of Johnnie Giddens, deceased, (Johnnie's Estate) greatly exceeded the value of its assets, which consisted solely of real property. After Heritage agreed to assign its judgment against Wilmer's Estate to Johnnie's Estate, the Administrator moved the probate court to approve all claims and judgments asserted against Wilmer's Estate, to approve the transfer of the assets of Wilmer's Estate to Johnnie's Estate, and to close Wilmer's Estate. After a hearing, the probate court granted the motion.

Fisher, who is the sole devisee under the will of Wilmer Giddens, filed a pro se appeal of the probate court's order.¹ As we understand his brief, Fisher complains (1) that the judgment of Heritage was barred by the statute of limitations, (2) that the probate court erred when it ordered the real property to be transferred to Johnnie's Estate, and (3) that the judgments and claims of Heritage and Johnnie's Estate are void and barred by the statute of limitations. We find (1) that the judgment in favor of Johnnie's Estate was not void and Fisher's statute of limitations issue was not preserved, (2) that the probate court did not abuse its discretion when it ordered the real

¹See TEX. EST. CODE ANN. § 355.058 (West 2014) (allowing "any person interested in an estate" to appeal the probate court's action on a claim). A "person interested" in an estate includes a devisee. TEX. EST. CODE ANN. § 22.018(1) (West 2014).

property to be transferred to Johnnie's Estate, and (3) that Fisher's complaints regarding Heritage's judgment are moot. Therefore, we will affirm the probate court's judgment.

I. Background

Wilmer Giddens died testate on July 8, 2006. On August 21, 2006, his will was probated in the Bowie County Constitutional County Court (the county court), and Fisher was named independent executor of Wilmer's Estate. On November 1, 2010, Johnnie's Estate obtained a judgment quieting title against Fisher, individually, and as administrator of Wilmer's Estate in Cause Number 10C0638-102 (the 2010 Judgment), in the 102nd Judicial District Court of Bowie County, Texas (the district court). In the 2010 Judgment, the district court quieted title to the following tracts in Johnnie's Estate and Wilmer's Estate:

603 Lanier, New Boston, Texas. Block/Tract 2, Lots 1-5, and being the same property described in a deed from Decedent, JOHNNIE GIDDENS, to Decedent, WILMER GIDDENS, dated May 11, 1990, recorded in Volume 1476, Page 227, of the Deed Records of Bowie County, Texas, being described as follows: . . .

(hereinafter Tract 1) and

702 North Center, New Boston, Texas. WF Thompson A-565 Block Tract 209, and being the same land described in a deed from Hubert G. Calloway and wife, Mary L. Calloway to the Decedents, JOHNNIE HUE GIDDENS and WILMER GIDDENS, dated July 30, 1993, recorded in Volume 1986, Page 49, of the Deed Records of Bowie County, Texas, being described as follows: . . .

(hereinafter Tract 2). In addition, in the 2010 Judgment, Johnnie's Estate was awarded money damages in the amount of \$46,115.00, with interest at the rate of five percent per annum from April 13, 2010, until paid, and attorney fees in the amount of \$2,500.00. On February 11, 2011, Johnnie's Estate filed an abstract of its judgment in Volume 5990, Page 297, of the records of the Bowie County clerk.

In 2016, Wilmer's Estate was transferred from the county court to the probate court, and on October 16, 2016, Fisher was removed as independent executor and Hornsby was appointed as the dependent administrator of Wilmer's Estate. On November 4, 2016, Johnnie's Estate filed an authenticated unsecured claim in the amount of \$6,795.49, representing one-half of the cost of repairs and maintenance of the house on Tract 2 incurred since the date of its judgment. On that same date, Johnnie's Estate filed an unsecured authenticated claim in the amount of \$17,986.39, representing one-half of the property taxes and delinquent taxes paid on Tract 1 and Tract 2 for tax years 1998 through 2015. Also, Johnnie's Estate filed a secured authenticated claim based on the 2010 Judgment and its abstract of judgment.

On January 18, 2017, the Administrator filed an amended inventory, appraisal, and list of claims (the Inventory), attesting that the assets of Wilmer's Estate consisted solely of Tract 1 and Tract 2, which had a combined value of \$52,436.00. The Inventory also listed claims against Wilmer's Estate of a judgment in the amount of \$71,113.71 in favor of Heritage in Cause Number 06-C1701-CCL, the 2010 Judgment in the amount of \$48,615.00 plus accrued interest,² the two unsecured claims of Johnnie's Estate, and the Administrator's fee, making the total claims against Wilmer's Estate in excess of \$144,000.00. No objection to the Inventory was filed, and the probate court approved the Inventory by order dated January 25, 2017.

On February 9, 2017, the probate court ordered the Administrator to conduct and conclude settlement discussions between Heritage, Johnnie's Estate, and Fisher, and if settlement could not

²At the time of the filing of the Inventory, the 2010 Judgment, with accrued interest and attorney fees, exceeded \$64,000.00.

be reached, the Administrator was to sell Tract 1 and Tract 2, with one-half of the net proceeds to be paid to Johnnie's Estate and one-half to be paid into the registry of the probate court. Also on that date, Fisher filed his objection to the sale of the estate property and to the claims of Heritage and Johnnie's Estate. After Heritage agreed to assign its judgment against Wilmer's Estate to Johnnie's Estate, the Administrator moved the probate court to approve all claims and judgments asserted against Wilmer's Estate, to approve the transfer of the assets of Wilmer's Estate to Johnnie's Estate, and to close Wilmer's Estate.

Fisher then filed a motion to dismiss the 2010 Judgment and other claims of Johnnie's Estate for lack of subject-matter jurisdiction. After a hearing, the probate court entered its orders denying Fisher's objections and motion to dismiss, accepting the claims and judgment of Heritage and Johnnie's Estate and ordering the Administrator to transfer Tract 1 and Tract 2 to Johnnie's Estate.

II. The 2010 Judgment Is Not Void and Is Not Barred by the Statute of Limitations

A. Standard of Review

In his third issue, Fisher asserts that the 2010 Judgment and the other claims of Johnnie's Estate are void and barred by the statute of limitations because the district court lacked subject-matter jurisdiction to hear the case. Whether a trial court has subject-matter jurisdiction is a question of law that we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Whether a statute applies and bars a claim by limitations also presents a question of law

that we review de novo. *Goose Creek Consol. Indep. Sch. Dist. v. Jarrar's Plumbing, Inc.*, 74 S.W.3d 486, 492 (Tex. App.—Texarkana 2002, pets. (2) denied).

B. Analysis

Although not entirely clear, it appears that Fisher argues that former Section 313 of the Texas Probate Code bars the 2010 Judgment and other claims because it deprived the district court of jurisdiction to enter the 2010 Judgment, and it deprived the probate court of jurisdiction over the other claims. Fisher also asserts that the statute of limitations bars recovery of the 2010 Judgment and other claims, without any citation to legal authority. At the time pertinent to this issue, probate proceedings were governed by the Texas Probate Code. Section 313 of the Probate Code provided, “When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending within ninety days after such rejection, or the claim shall be barred.” *See* Act of Mar. 29, 2001, 77th Leg., R.S., ch. 10, § 3, sec. 313, 2001 Tex. Gen. Laws 17, 18, *repealed by* Act of May 26, 2009, 81st Leg., R.S., ch. 680, § 10(a), 2009 Tex. Gen. Laws 1512, 1731.

Essentially, it appears that Fisher argues that he previously rejected Johnnie’s Estate’s claims and that Johnnie’s Estate was required by Section 313 to file suit in the county court within ninety days of rejection. Because Johnnie’s Estate did not file suit in county court, Fisher appears to argue that the claims are barred under Section 313. Fisher further argues that, because the

probate court had exclusive jurisdiction over those claims, the 102nd Judicial District Court did not have jurisdiction and its subsequent judgment is void. We disagree.³

In 2010, Wilmer's Estate was an independent administration and Fisher was its independent administrator. Section 313 was part of the claims procedures in the Probate Code for those "authenticated claims which [were] designed to be processed through and under the direction of the probate court," i.e., in a dependent administration. *Bunting v. Pearson*, 430 S.W.2d 470, 472 (Tex. 1968). As such, the Texas Supreme Court held that this section does not apply to independent administrations because it would be inconsistent with the purpose of an independent administration, "which is to free the 'independent executor' from the control of the court." *Id.* Based on this precedent, we find that Section 313 did not deprive the district court of subject-matter jurisdiction to enter the 2010 Judgment.

In addition, although the county court, in which Wilmer's Estate was then pending,⁴ would have had jurisdiction to hear the suit to quiet title that resulted in the 2010 Judgment, the county court's jurisdiction was not exclusive. *See In re Puig*, 351 S.W.3d 301, 305 (Tex. 2011) (orig. proceeding). The district court, which is granted general jurisdiction over all matters, unless exclusive jurisdiction is given to another court or administrative body, had concurrent jurisdiction with the county court to hear the suit to quiet title and to enter the 2010 Judgment. *See TEX.*

³Since the value of the 2010 Judgment on the date of the probate court's order exceeded that combined value of Tract 1 and Tract 2, we need only consider Fisher's arguments in relation to that judgment.

⁴As mentioned above, Wilmer's Estate was originally filed in the county court and then transferred to the probate court.

CONST. art. V, § 8; *Puig*, 351 S.W.3d at 305. Therefore, we find that the 2010 Judgment is not void.

Fisher also asserts that the 2010 Judgment and other claims are barred by the statute of limitations, without citation to legal authority. In the probate court, neither the Administrator nor Fisher asserted the statute of limitations as a defense to the 2010 Judgment or other claims.⁵ Since this defense was not asserted in the probate court, this complaint was not preserved for our review. *See* TEX. R. APP. P. 33.1(a)(1)(A) (requiring a timely request at the trial court stating with sufficient specificity the grounds for the ruling sought as a prerequisite to presenting a complaint for appellate review).

For the reasons stated, we overrule Fisher's third issue.

III. The Probate Court Did Not Abuse Its Discretion

In his second issue, Fisher complains that the probate court erred by ordering the Administrator to transfer Tract 1 and Tract 2 to Johnnie's Estate. As we read his brief, it appears that Fisher is arguing that, when Johnnie Giddens died, Tract 1 and Tract 2 became fully owned by Wilmer Giddens and that the probate court erred in finding that they were owned jointly by Johnnie's Estate and Wilmer's Estate. Therefore, he concludes, the probate court erred in transferring the tracts to Johnnie's Estate.

⁵Although Fisher asserted that limitations ran when Johnnie's Estate failed to file a suit in county court within the ninety-day period provided by Section 313 of the Probate Code, this was an argument in support of his motion to dismiss for lack of subject-matter jurisdiction. Further, as previously noted, Section 313 was inapplicable to the independent administration. Therefore, it would not bar the 2010 Judgment and other claims by limitations.

A. Standard of Review

We review the probate court’s order under an abuse of discretion standard. *Estate of Nielsen*, 533 S.W.3d 39, 40 (Tex. App.—Texarkana 2017, no pet.). “A trial court abuses its discretion if it acts without reference to any guiding rules and principles or reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.” *Id.* (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)). “When reviewing factual issues or other matters committed to the trial court’s discretion, we may not substitute our judgment for that of the trial court.” *Id.* (citing *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992)). “However, when reviewing the trial court’s determination of the law, our review is much less deferential, since a trial court has no discretion in determining what the law is or in applying the law to the facts.” *Id.* (citing *Walker*, 827 S.W.2d at 840). It is an abuse of discretion when the trial court erroneously interprets the law or misapplies the law. *Id.* (citing *Walker*, 827 S.W.2d at 840; *Morales v. Segura*, No. 04-15-00365-CV, 2015 WL 8985802, at *2 (Tex. App.—San Antonio Dec. 16, 2015, no pet.) (mem. op)).

B. Analysis

The determination that Tract 1 and Tract 2 were jointly owned by Johnnie’s Estate and Wilmer’s Estate was made by the district court in the 2010 Judgment. Therefore, Fisher’s complaint amounts to a collateral attack on that judgment. While “a litigant may attack a void judgment directly or collaterally, . . . a voidable judgment may only be attacked directly.” *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271 (Tex. 2012) (citing *Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex. 2009)). A judgment is “void when ‘the court rendering judgment had no jurisdiction of

the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.” *Id.* at 272 (quoting *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex. 2010) (quoting *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005))). We have previously determined that the 2010 Judgment is not void. Therefore, it could only be attacked directly, such as, by an appeal, a motion for new trial, or a bill of review. *Id.* at 271. Since the time for a direct attack on the 2010 Judgment has long passed, it stands as a binding judgment on the parties, and Fisher may not collaterally attack it. *See id.* at 275. Therefore, the probate court did not abuse its discretion in recognizing that Wilmer’s Estate owned an undivided one-half interest in Tract 1 and Tract 2.

When an interested party objects in writing to a claim, the probate court must “hear evidence and render judgment as in ordinary suits.” TEX. EST. CODE ANN. § 355.054(b)(2) (West 2014). Fisher does not dispute that the evidence showed that the combined value of Wilmer’s Estate’s interest in Tract 1 and Tract 2 was \$52,436.00, nor does he dispute that there were no other claimants against Wilmer’s Estate. As we have previously noted, the value of the 2010 Judgment in favor of Johnnie’s Estate was over \$64,000.00. Since this judgment was in excess of the value of Tract 1 and Tract 2, we cannot say the trial court abused its discretion in ordering the transfer of those tracts to Johnnie’s Estate in satisfaction of that judgment. Consequently, we overrule Fisher’s second issue.

IV. Fisher’s Complaint Regarding Heritage’s Judgment Is Moot

Since the value of the 2010 Judgment exceeded the value of Tract 1 and Tract 2, whether Heritage’s judgment was barred by the statute of limitation would have no effect on the disposition

of this appeal. *See Smith v. Williams*, No. 06-14-00040-CV, 2015 WL 3526089, at *17–18 (Tex. App.—Texarkana May 29, 2015, no pet.) (mem. op.). Therefore, we overrule Fisher’s first issue as moot.

For the reasons stated, we affirm the judgment of the trial court.

Ralph K. Burgess
Justice

Date Submitted: January 23, 2018
Date Decided: February 9, 2018