



IN THE
TENTH COURT OF APPEALS

No. 10-08-00345-CV

IN RE HAROLD BARTON

Original Proceeding

MEMORANDUM OPINION

Harold Barton filed a petition for writ of mandamus and requested this Court to order the trial court to enter an order admitting the writing of Peggy Barton, dated January 19, 2007, to probate as the last will and testament of Peggy Barton.

We note that Harold failed to serve the trial court with the petition. *See* TEX. R. APP. P. 9.5, 52.2. However, we suspend the application of these service rules and do not require proof of service on the trial court so that we may expedite the disposition of this proceeding. *See* TEX. R. APP. P. 2.

Upon an application by Harold to probate the writing as the will of Peggy, the trial court found the writing was not a will. Because the trial court's ruling disposed of the controverted issue involved between the parties, we determine that the ruling is a

final appealable order. TEX. PROB. CODE ANN. § 5(g) (Vernon Supp. 2008); *Majeski v. Estate of Majeski*, 163 S.W.3d 102, 106 (Tex. App.—Austin 2005, no pet.) (“[W]e must consider whether the order is part of a proceeding that left unresolved issues or whether the order “concluded a discrete phase” of the proceedings.”). See *Cherry v. Reed*, 512 S.W.2d 705, 707 (Tex. Civ. App.—Houston [1st Dist.] 1974, writ ref’d n.r.e.) (“The trial court’s summary judgment denying probate of the writing offered by appellants effectively disposed of the basic controverted issue between the parties.”); see also *Fischer v. Williams*, 160 Tex. 342, 347 (Tex. 1960) (“If the motion to dismiss the contest on the ground that contestants had failed to show an interest in the estate had been sustained, the order would have finally disposed of the controverted question involved, and would have been appealable.”)

Accordingly, we deny the petition.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Vance, and
Justice Reyna
Petition denied
Opinion delivered and filed October 17, 2008
[OT06]