



NUMBER 13-19-00151-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN THE ESTATE OF JAMES PHILLIP JOHNSON, DECEASED

**On appeal from the Probate Court No. 2
of Bexar County, Texas.**

MEMORANDUM OPINION¹

**Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Hinojosa**

Appellant Judy Freeman filed a motion for declaratory judgment in a probate case, seeking a declaration that she was the surviving spouse of the decedent James P. Johnson a/k/a James Phillip Johnson and alleging fraud against appellee Kundu Johnson, the administrator of James's estate. The trial court granted Kundu's plea to the jurisdiction and Rule 91a motion to dismiss. In two issues, Freeman argues that the trial court erred

¹ This case is before the Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001.

in: (1) granting the plea to the jurisdiction without allowing Freeman an opportunity to amend her pleadings; and (2) dismissing Freeman's fraud action without an opportunity to amend her pleadings or have a hearing on the merits. We affirm in part and dismiss in part.

I. BACKGROUND

James died intestate in Bexar County, Texas on May 20, 2015. His son Kundu filed an application to determine heirship on July 9. See TEX. EST. CODE ANN. § 202.001. The trial court signed a final judgment on September 8, declaring that James's only heirs were his three sons James Phillip Johnson Jr., Phillip Johnson, and Kundu and that each were entitled to an equal share of James's estate. See *id.* § 202.202. Nearly three years later, on July 26, 2018, Freeman filed "Plaintiff's Original Motion for Declaratory Judgment and Request for Disclosure." In her pleading, Freeman alleged she was James's common-law wife and that she lived with James from 1998 through his death. Freeman sought a declaration that she was James's surviving spouse and that she was entitled to a life estate in the real property where she resided with James. Freeman alleged that Kundu made several false representations concerning Freeman's status as James's surviving spouse.

Kundu answered asserting the affirmative defenses of laches, estoppel, and res judicata. Kundu then filed a Rule 91a motion to dismiss Freeman's fraud claim, arguing that Freeman's allegations did not state a legally recognizable cause of action. See TEX. R. CIV. P. 91a ("Dismissal of Baseless Causes of Action"). Kundu also filed a plea to the jurisdiction, arguing that the trial court could not declare that Freeman was an heir to the

estate because its plenary power had expired. After a hearing, the trial court granted both the motion to dismiss and the plea to the jurisdiction. Freeman filed a motion for new trial which was overruled by operation of law. Freeman now appeals.

II. PLENARY POWER

A. Applicable Law

“A probate court’s order determining heirship constitutes a final judgment that may be appealed or reviewed within the same time limits and in the same manner as any other judgment in a probate matter.” *Woods v. Kenner*, 501 S.W.3d 185, 191 (Tex. App.—Houston [1st Dist.] 2016, no pet.); see TEX. EST. CODE ANN. § 202.202. Where no post-trial motions are filed, a trial court retains jurisdiction over a case for thirty days after it signs a final judgment or order. TEX. R. CIV. P. 329b(d); see *Lane Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 310 (Tex. 2000). After the expiration of thirty days, the trial court loses its plenary power and lacks jurisdiction to act in the matter. See *Check v. Mitchell*, 758 S.W.2d 755, 756 (Tex. 1988) (per curiam). Any action taken by the trial court after its plenary power expires is void. See *State ex. rel Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (per curiam); *In re Martinez*, 478 S.W.3d 123, 126 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

An appellate court does not have jurisdiction to address the merits of appeals from void orders. *Freedom Commc’ns., Inc. v. Coronado*, 372 S.W.3d 621, 623–24 (Tex. 2012) (per curiam). In such a case, the appellate court must declare the orders void and dismiss the appeal. See *Owens*, 907 S.W.2d at 486. (“The court of appeals should have dismissed [appellant’s] appeal for lack of jurisdiction because the order appealed from was signed

long after the district court’s plenary jurisdiction had expired.”). Whether a trial court’s plenary power has expired is a question of law we review de novo. *Estate of Brazda*, 582 S.W.3d 717, 731 (Tex. App.—Houston [1st Dist.] 2019, no pet.).

B. Analysis

Here, there was no appeal from the trial court’s September 8, 2015 judgment declaring heirship, and no party filed a timely motion for new trial or a motion to modify, correct, or reform the judgment. Therefore, the trial court’s plenary jurisdiction expired thirty days from the date of the judgment. See TEX. R. CIV. P. 329b. When Freeman filed her motion for declaratory relief, the trial court was without authority to grant Freeman relief.² See *id*; see also *In re John G. & Marie Stella Kenedy Mem’l Found.*, 315 S.W.3d 519, 522 (Tex. 2010) (explaining that a probate court cannot assert jurisdiction based on matters incident to an estate when there is no open or pending probate matter to which an heirship claim would be incident). Therefore, the trial court did not err in dismissing Freeman’s motion for declaratory relief for want of jurisdiction. However, because the trial court did not have authority to consider the merits of Freeman’s claims, its order granting Kundu’s Rule 91a motion to dismiss is void. See *Owens*, 907 S.W.2d at 486.

III. CONCLUSION

We affirm the trial court’s order granting Kundu’s plea to the jurisdiction. We

² When the appellate deadlines have expired, an interested person may still attack a judgment declaring heirship by bill of review. See *In re Estate of Rogers*, 322 S.W.3d 361, 363 (Tex. App.—El Paso 2010, no pet.); see also TEX. EST. CODE ANN. § 202.203 (providing for bill of review to correct judgment declaring heirship for heirs who are not served with citation by registered or certified mail or personal service); TEX. R. CIV. P. 329b(f) (“On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law[.]”). However, we express no opinion as to the viability of a bill of review in this particular case.

dismiss the appeal from the trial court's order granting Kundu's Rule 91a motion for want of jurisdiction. We deny Kundu's motion to assess damages for pursuit of a frivolous appeal.

LETICIA HINOJOSA
Justice

Delivered and filed the
11th day of June, 2020.