



NUMBER 13-20-00241-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

**IN THE GUARDIANSHIP OF LEON R. BERNSEN, SR.,
AN INCAPACITATED PERSON**

**On appeal from the County Court at Law No. 5
of Nueces County, Texas.**

MEMORANDUM OPINION

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

Appellants Bernsen Farms, Ltd., Dianna Bernsen, Individually, and Dianna Bernsen, LLC, General Partner of Bernsen Farms, Ltd. appeal the trial court's order granting complete relief. We dismiss the appeal. See TEX. R. APP. P. 43.2.

On May 4, 2020, in the trial court, appellees Lynn Bernsen Allison, Lea Bernsen Brown, and Bradley Pickens filed a Rule 12 "Motion for Complete Relief," contesting appellants' counsel's authority to represent the Bernsen Farms in this guardianship

proceeding. See TEX. R. CIV. P. 12 (“A party in a suit . . . may . . . cause the attorney to be cited to appear before the court and show his authority to act.”).

Following a hearing on the matter, on June 2, 2020, the trial court issued an order granting appellees’ motion. On June 3, 2020, appellants appealed the trial court’s order, which stated the following:

IT IS THEREFORE, ORDERED, ADJUDGED, and DECREED that all pleadings filed by . . . [appellants’ counsel] for Bernsen Farms Ltd. in any cause or legal matter presently on file are hereby struck as of June 8, 2020 (5:00 p.m.) *if no person who is authorized by all Bernsen Farms Ltd. partners (general partner and limited partners) to prosecute or defend such pleadings appears before such date/time.*

On July 1, 2020, the Clerk of this Court notified appellants that their notice of appeal was defective because it was not an appealable order. We further notified appellants that unless they cured the defect on or before July 11, 2020, this appeal would be dismissed. See TEX. R. APP. P. 43.2. Appellants have not cured the defect and asserted, instead, that “under well-settled law, a Rule 12 Order such as this is final and appealable in a guardianship proceeding.”

While we agree with appellants that a Rule 12 order may be appealable when it disposes of all issues raised in the rule 12 motion to show authority and concludes a discrete phase of the guardianship proceedings, *In re Guardianship of Benavides*, 403 S.W.3d 370, 374 (Tex. App.—San Antonio 2013, pet. denied), a judgment cannot be final if it is conditional upon future or uncertain events. See *Hinde v. Hinde*, 701 S.W.2d 637, 639 (Tex. 1985). Generally, “an appeal may be taken only from a final judgment.” *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). A judgment must be definite to be final, and a conditional order, therefore, is not final for purposes of appeal. See *id.*; *Hinde*, 701 S.W.2d at 639.

Appellants rely on *Benavides* and *Garza* to support their argument that the trial court's Rule 12 order is final and appealable. *Benavides*, 403 S.W.3d at 374; *In re Estate of Garza*, No. 13–14–00730–CV, 2015 WL 3799370, at *2 (Tex. App.—Corpus Christ—Edinburg June 18, 2015, no pet.). However, in *Benavides*, the challenged Rule 12 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.” *Benavides*, 403 S.W.3d at 374. Similarly, in *Garza*, the Rule 12 order did not contain conditional language. See *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (“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.”); see also *In re Estate of Garza*, 2015 WL 3799370, at *2.

Here, the trial court's order did not strike appellants' pleadings because it contains conditional language stating that the pleadings would be stricken “if no person who is authorized by all Bernsen Farms Ltd. partners (general partner and limited partners) to prosecute or defend such pleadings appears before [June 8]” (Emphasis added). Thus, the conditional order challenged in this appeal is not definite because it does not state that an authorized person failed to appear before June 8, resulting in the striking of appellants' pleadings. See *Logan v. McDaniel*, 21 S.W.3d 683, 689 (Tex. App.—Austin 2000, pet. denied) (holding that a rule 12 order was final and appealable when no issues raised in the motion to show authority remained unresolved). To the contrary, the trial court's order did not resolve the question of whether appellants' pleadings were stricken, and it therefore did not conclusively adjudicate the matter as it was contingent on the occurrence of a future event. See *id.*; see also *Matter of Guardianship of Thrash*, No. 04-

19-00477-CV, 2020 WL 4046522, at *3 (Tex. App.—San Antonio July 15, 2020, no pet h.) (mem. op.) (concluding that “the trial court’s order striking the pleadings did not conclude a discrete phase of the guardianship proceeding” and was therefore “interlocutory and not appealable”). Therefore, we conclude that the order is not final for purposes of appeal.

We accordingly DISMISS the appeal without addressing the merits.

JAIME TIJERINA
Justice

Delivered and filed the
13th day of August, 2020.