NO. 12-10-00048-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE ESTATE OF	***§***	***APPEAL FROM THE***
JOHN W. ISAACS,	***§***	***COUNTY COURT AT LAW***
DECEASED	***§***	***CHEROKEE COUNTY, TEXAS***

MEMORANDUM OPINION

Keisha Dian Isaacs Swinford and Kalena Cheyenne Isaacs Hooper appeal from the trial court's judgment in their suit brought against Appellees, their father, John Leeman Isaacs, their uncle, Jimmy William Isaacs, and the executor of their grandfather's estate, L.H. Crockett. Appellants raise seven issues on appeal. We affirm.

BACKGROUND

Ola Mae Isaacs, Appellants' grandmother, died June 22, 1989. Within a month, their grandfather, John W. Isaacs (Dub), filed an application to probate Ola Mae's will. On February 27, 1990, Dub filed an application for a declaration of heirship and an agreement not to probate the will but, instead, to allow Ola Mae's estate to pass by intestacy. Dub also filed a motion for service of citation by personal service on the minors, which was granted the same date. Also on the same date, the court appointed a guardian ad litem to represent Ola Mae's six minor grandchildren, including Appellants.

On March 12, 1990, Dub moved to dismiss the application to probate the will. That same day, John and Jimmy each filed a partial disclaimer, disclaiming all rights to Ola Mae's estate except for a specified amount in cash. John filed a disclaimer on behalf of his five minor children, including Appellants, disclaiming all of their rights to any property in Ola Mae's estate. Jimmy filed a disclaimer on behalf of his minor daughter, disclaiming all of her rights to any

property in Ola Mae's estate. Additionally, the guardian ad litem filed a disclaimer on behalf of all of the minor heirs, disclaiming all of their rights to any property in Ola Mae's estate. Also, on March 12, 1990, the trial court signed an order dismissing Dub's application to probate Ola Mae's will and an order approving the disclaimers by the minor heirs. The trial court found the allegations in Dub's application for a declaration of heirship to be true and signed a judgment declaring heirship on March 12, 1990. The bulk of Ola Mae's estate passed to Dub.

Dub died on September 30, 2008, leaving an estate worth approximately $3,000,000.00. Crockett filed an application to probate Dub's will in the County Court of Cherokee County. The will left everything to John and Jimmy, "share and share alike." The will was admitted to probate on February 10, 2009. A week later, Keisha filed a declaratory judgment action against Crockett as executor of Dub's estate requesting the court declare that the disclaimers filed in 1990 on behalf of her and her brothers and sisters are void and that they were tenants in common with Dub in regard to all property owned by Ola Mae at the time of her death. The two causes were transferred to the County Court at Law of Cherokee County and consolidated.

Kalena joined her sister as plaintiff, and in their live pleading, they named as defendants Crockett, as executor of Dub's estate, John, and Jimmy. They requested a declaration that they and their brother John are the heirs of Ola Mae, that the disclaimers made on their behalf are void, and that they are tenants in common with Dub and his estate in regard to all property owned by Ola Mae at the time of her death and all property of Dub's estate. Additionally, Appellants pleaded causes of action for promissory estoppel, breach of fiduciary duty, conversion, fraud, fraudulent concealment, tortious interference with inheritance rights, negligent misrepresentation, negligent undertaking, negligence, aiding and abetting fraud, and conspiracy to defraud.

Appellants filed a motion for partial summary judgment arguing that, as a matter of law, the disclaimers executed on their behalf are void because no personal representative was appointed for them and the purported disclaimers were executed without prior court approval. Alternatively, they argued that the court should grant a no evidence partial summary judgment because the defendants had not raised any evidence to refute Appellants' allegations that the disclaimers are void. In support of their motion, Appellants "rely on, refer to and incorporate

herein by reference all of the record in this cause." Additionally, Appellants attached numerous exhibits to the motion including Ola Mae's probate files.

Crockett also filed a motion for summary judgment asserting that he is entitled to judgment as a matter of law because the disclaimers are valid. He also contends that even if they were ineffective, the disclaimers were not void and Appellants' entire cause of action is barred by the statute of limitations. His motion is supported by some exhibits.

John filed a traditional motion for summary judgment arguing that Appellants' claims constitute an improper collateral attack on the March 12, 1990 order and judgment rendered in Ola Mae's case. He further argued that the doctrine of res judicata applies to establish that the 1990 order and judgment extinguish all rights of Appellants to bring suit on all or any part of the transaction, or series of connected transactions, out of which the earlier action arose. Further, he asserts a four year statute of limitations applies to equitable bills of review, and limitations expired four years after Appellants reached majority in 1997 and 1999. Therefore, he argues, Appellants are prohibited from asserting claims inconsistent with and contrary to the terms of the 1990 order and judgment, and this lawsuit is an impermissible collateral attack. In support of his motion, John relies on the 1990 order and judgment, the disclaimers filed in Ola Mae's probate case, the motion to approve the disclaimers, the application for and order approving the guardian ad litem, Appellants' birth certificates, and all summary judgment evidence presented by Appellants and Crockett.

Jimmy also filed a traditional motion for summary judgment asserting that Appellants lack standing to challenge the disclaimer of his daughter Jessica and they cannot recover from him. He argues further that Appellants' lawsuit is an impermissible collateral attack, and it is barred by res judicata and the statute of limitations. He also contends that Appellants' disclaimers are effective, but if they were not, they would not be void and would act as an assignment to John or Dub. Jimmy's motion is supported by more than twenty documents.

On January 15, 2010, the trial court signed an order denying Appellants' motion for partial summary judgment and granting both Crockett's motion for summary judgment and John's motion for summary judgment. On April 5, 2010, the trial court signed a final judgment incorporating that order and granting Jimmy's motion for summary judgment. The court ordered that Appellants take nothing on their claims against Appellees and denied Appellees' affirmative

claims for attorneys' fees. The judgment includes a statement that it is intended to dispose of all affirmative claims and all existing legal issues between all parties to the action and to constitute a final appealable judgment.

STANDARD OF REVIEW

We review the trial court's decision to grant summary judgment de novo. ***Tex. Mun. Power Agency v. Pub. Util. Comm'n***, 253 S.W.3d 184, 192 (Tex. 2007). A defendant moving for traditional summary judgment on an affirmative defense has the burden to conclusively establish that defense. TEX. R. CIV. P. 166a(c); ***KPMG Peat Marwick v. Harrison Cnty Hous. Fin. Corp.***, 988 S.W.2d 746, 748 (Tex. 1999); ***Nixon v. Mr. Prop. Mgmt. Co.***, 690 S.W.2d 546, 548 (Tex. 1985). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. *See* ***City of Houston v. Clear Creek Basin Auth.***, 589 S.W.2d 671, 678-79 (Tex. 1979). Review of a summary judgment requires that the evidence presented by both the motion and the response be viewed in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could and disregarding all contrary evidence and inferences unless reasonable jurors could not. ***Timpte Indus., Inc. v. Gish***, 286 S.W.3d 306, 310 (Tex. 2009); ***Nixon***, 690 S.W.2d at 548-49. Evidence that favors the movant's position will not be considered unless it is uncontroverted. ***Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co.***, 391 S.W.2d 41, 47 (Tex. 1965).

OLA MAE'S HEIRSHIP PROCEEDING

In their first issue, Appellants contend the trial court erred in granting the summary judgment motions filed by Crockett, John, and Jimmy. In their second issue, they argue that the order approving the minor heirs' disclaimers and the heirship judgment in the estate of Ola Mae are void due to jurisdictional defects. Therefore, they argue, the summary judgments, which rely on these orders, are erroneous. Appellants argue that because Ola Mae died testate, the probate court lacked the subject matter jurisdiction necessary to commence an heirship proceeding. They further contend that Dub lacked standing because he was not an heir at law of Ola Mae and, therefore, the heirship judgment is void for lack of jurisdiction. Appellants assert that the

agreement not to probate Ola Mae's will was a prohibited attempt to avoid a testamentary disposition and not effective to defeat the testamentary trust created by the will. They assert that the probate court failed to acquire jurisdiction over a representative of Ola Mae's testamentary trust or a guardian of Appellants' estates, and therefore the agreement not to probate Ola Mae's will, not having been signed by all necessary parties, was ineffective. They argue that the disclaimers signed by John and the guardian ad litem are void because they lacked the authority to disclaim a minor child's property interests and the disclaimer was made without the statutorily required pre-disclaimer approval.

Accordingly, the disposition of this appeal comes down to the question of jurisdiction. If the County Court at Law of Cherokee County had jurisdiction to render a judgment in the cause disposing of Ola Mae Isaacs' estate, the trial court's summary judgment is correct because this suit, brought almost twenty years later, is an impermissible collateral attack on that final judgment. If it did not, the probate court judgment is void and may be challenged in this suit.

Collateral Attack

It is undeniable that the time period for direct appeal and for bill of review passed long ago. *See* TEX. R. APP. P. 26.1; TEX. PROB. CODE ANN. § 31 (West 2003). Furthermore, Texas courts have refused to apply the discovery rule to claims arising out of probate proceedings. *See* ***Frost Nat'l Bank v. Fernandez***, 315 S.W.3d 494, 509 (Tex. 2010). Accordingly, limitations bars Appellants' challenge to the 1990 order and judgment. *See* ***Little v. Smith***, 943 S.W.2d 414, 417 (Tex. 1997). Therefore, Appellants' suit is a collateral attack on the 1990 order and judgment. A collateral attack is any proceeding to avoid the effect of a judgment that does not meet all the requirements of a valid direct attack. ***Shackelford v. Barton***, 156 S.W.3d 604, 606 (Tex. App.–Tyler 2004, pet. denied). Only a void judgment may be collaterally attacked. ***Browning v. Prostok***, 165 S.W.3d 336, 346 (Tex. 2005). A judgment is void only when it is apparent that the court had no jurisdiction over a party or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act. ***Id***. When reviewing a collateral attack, we presume the validity of the judgment under attack. ***Shackelford***, 156 S.W.3d at 606. Where the judgment is voidable as opposed to void, the rule of res judicata applies. ***Berry v. Berry***, 786 S.W.2d 672, 673 (Tex. 1990) (per curiam). We next consider whether the order and judgment of 1990 are void.

Jurisdiction

The County Court at Law of Cherokee County has probate jurisdiction. *See* TEX. GOV'T CODE ANN. § 25.0003(d) (West Supp. 2011); TEX. PROB. CODE ANN. § 4C(b) (West Supp. 2011). This includes jurisdiction over heirship proceedings. TEX. PROB. CODE ANN. § 3(bb)(3) (West Supp. 2011). That court's jurisdictional power is dormant until it is awakened in the correct manner. ***Graham v. Graham***, 733 S.W.2d 374, 377 (Tex. App.–Amarillo 1987, writ ref'd n.r.e.). Jurisdiction of a court must be legally invoked through various procedural steps. ***State v. Olsen***, 360 S.W.2d 398, 400 (Tex. 1962) (orig. proceeding), *overruled on other grounds by* ***Jackson v. State***, 548 S.W.2d 685, 690 n.1 (Tex. Crim. App. 1977). Generally, a trial court does not have jurisdiction to enter a judgment against a respondent unless the record shows proper service of citation on the respondent, or an appearance by the respondent, or a written memorandum of waiver. TEX. R. CIV. P. 124. However, minors cannot waive service of citation. ***In re D.W.M.***, 562 S.W.2d 851, 853 (Tex. 1978) (per curiam). The purpose of citation is to give the court proper jurisdiction of the parties and to provide notice to the defendant that he has been sued and by whom and for what. Therefore, due process will be served and he will have an opportunity to appear and defend the action. *See* ***Sgitcovich v. Sgitcovich***, 241 S.W.2d 142, 146 (Tex. 1951); ***Cockrell v. Estevez***, 737 S.W.2d 138, 140 (Tex. App.–San Antonio 1987, no writ).

The record shows that John and Jimmy waived service of process and all of the minor heirs were properly served. Thus, the trial court had personal jurisdiction over them. ***Simmons v. Arnim***, 220 S.W. 66, 68 (Tex. 1920). Having jurisdiction over their persons, the minors were before the court for judgment as to anything that the court had the power to determine in the suit, or lawfully incident to its determination. ***Id***. As previously stated, the court also had subject matter jurisdiction. Once jurisdiction attaches, it continues until the estate is closed. ***Flynt v. Garcia***, 587 S.W.2d 109, 109-10 (Tex. 1979) (per curiam); ***Graham***, 733 S.W.2d at 378.

Recitations in Judgment

Furthermore, if a court having potential jurisdiction renders a judgment regular on its face that contains recitations stating that potential jurisdiction has been activated, then the judgment is voidable, not void, and may be set aside only by a direct attack. *See* ***Akers v. Simpson***, 445 S.W.2d 957, 959 (Tex. 1969). The order approving the disclaimers by the minor heirs includes

the finding that "[t]he Court has jurisdiction of the subject matter and all persons over whom it should have jurisdiction." Likewise, the judgment declaring heirship includes the finding that "[t]his court has jurisdiction and venue of the Decedent's estate." That judgment further states that "[n]otice and citation have been given in the manner and for the length of time required by law." Finally, the judgment includes the finding that "[a]ll Respondents named in the Application have duly waived citation or have been properly served with citation as required by law." The County Court at Law had the power to determine whether its jurisdiction had been activated, and the recitations making that determination are immune from attack in a collateral proceeding. ***McEwen v. Harrison***, 345 S.W.2d 706, 710 (Tex. 1961) (orig. proceeding). Accordingly, the court had jurisdiction to render the order approving the disclaimers and the judgment declaring heirship. However, we will address Appellants' arguments to the contrary.

Effect of Ola Mae's Will

Appellants, relying on Texas Probate Code Section 48, assert that a probate court has no authority to exercise jurisdiction to declare heirship when the decedent died testate. Section 48 provides that a proceeding to declare heirship may be filed in the probate court only when a person died intestate as to some or all of his or her property, when a will has been probated or estate administered but real or personal property was omitted, or when there has not been a final disposition. ***Fernandez***, 315 S.W.3d at 506.

Here, Dub initially filed an application for probate of Ola Mae's will. Later, he filed an application for a declaration of heirship supported by the agreement not to probate the will. He also moved to dismiss the application for probate. The court ordered Ola Mae's will to be withdrawn and removed from the file and dismissed the application for probate on the same day and at the same time the court signed the judgment declaring heirship. The court's probate jurisdiction was legally invoked and continued until the estate closed. ***Flynt***, 587 S.W.2d at 110. The judgment declaring heirship includes a finding that all beneficiaries of the will agreed to not probate the will. Thus, the record shows that Ola Mae's will was never probated and her estate was treated as if she died intestate, consistent with Section 48.

Dub's Standing

Appellants contend that Dub did not have standing to bring the heirship proceeding. Standing is a prerequisite to subject matter jurisdiction. ***Fernandez***, 315 S.W.3d at 502. The

existence of standing is a question of law. ***Cleaver v. George Staton Co.***, 908 S.W.2d 468, 472 (Tex. App.–Tyler 1995, writ denied). The probate code specifically provides that proceedings to declare heirship may be instituted by the qualified personal representative of the estate of the decedent, or by the owner of part of the decedent's estate. TEX. PROB. CODE ANN. § 49(a) (West Supp. 2011). Additionally, anyone who owns an interest in the decedent's real property must be made a party to the proceeding. ***Id***. § 49(b). It is undisputed that all of the property in Ola Mae's estate was community property. Dub had an interest in her estate by virtue of the agreement not to probate the will and the disclaimers. Thus, pursuant to the probate code, Dub had standing to institute the proceeding to declare heirship.

Family Settlement Agreement

Next, Appellants argue that the agreement not to probate the will was a nullity because (1) Texas law precludes using such agreements to defeat a testamentary trust, and (2) the purported settlement was invalid because it was not joined by the trust or a proper guardian of Appellants' estates. Accordingly, they argue, the court lacked jurisdictional authority.

An agreement not to probate a will, or family settlement, is an alternative method of administration in Texas that is a favorite of the law. ***Shepherd v. Ledford***, 962 S.W.2d 28, 32 (Tex. 1998). Under such an agreement, the beneficiaries of an estate are free to arrange among themselves for the distribution of the estate and for the payment of expenses from that estate. ***Id***. However, such an agreement generally requires all of the heirs and beneficiaries to agree that a purported will shall not be probated. ***Salmon v. Salmon***, 395 S.W.2d 29, 32 (Tex. 1965). Such an agreement is valid and enforceable. ***Id***.

Here, the agreement not to probate Ola Mae's will states that it is made among Dub, individually and as trustee of the trust established in Ola Mae's will, Jimmy, individually and as parent and legal guardian of Jessica, and John, individually and as parent and managing conservator of John, Keisha, Kalena, Crystal and Jonathan, "who constitute all of the beneficiaries of" Ola Mae's will. The agreement was signed by Dub, "Individually and as Trustee of the Trust established in Decedent's will," Jimmy, and John.

We disagree with Appellants' argument that an agreement not to probate a will is invalid if it defeats a testamentary trust. The out of state cases Appellants rely on are not binding on this court. Appellants have presented no Texas case or statute supporting this assertion, and we have

found none. Family settlement agreements are favored in Texas. ***Shepherd***, 962 S.W.2d at 32. Especially in light of the fact that the will containing the terms of the alleged trust is not before us, we decline to make new law.[1] Furthermore, even if the agreement was a nullity, that would mean the trial court erred, not that it lost jurisdiction. *See* ***Wilkinson v. Owens***, 72 S.W.2d 330, 334 (Tex. Civ. App.–Texarkana 1932, no writ) (procedural error rendered sale by purported guardian voidable, but court had jurisdiction over the case).

A trust is not a legal entity. *See* ***Ray Malooly Trust v. Juhl***, 186 S.W.3d 568, 570 (Tex. 2006) (per curiam). There is no provision in Texas law requiring a trust to be "joined" in a settlement agreement. In all proceedings concerning trusts, the trustee is a necessary party if a trustee is serving at the time the action is filed. TEX. PROP. CODE ANN. § 115.011(b)(4) (West Supp. 2011). Assuming Dub was properly serving as trustee of a valid trust, he was the appropriate one to sign as trustee, which he did.

Under certain circumstances, the court must appoint a guardian to preserve and protect the estate of a minor. *See* ***McKinley v. Salter***, 136 S.W.2d 615, 620 (Tex. Civ. App.–El Paso 1939, no writ). While a parent is the natural guardian of a minor, and he may be appointed guardian of the minor's estate, without appointment the parent has no authority to manage and control the minor's estate. ***Kaplan v. Kaplan***, 373 S.W.2d 271, 273 (Tex. Civ. App.–Houston [1st Dist.] 1963, no writ); ***Silber v. S. Nat'l Life Ins. Co.***, 326 S.W.2d 715, 717 (Tex. Civ. App.–San Antonio 1959, writ ref'd). There is no authority for a parent to appoint himself the guardian of the estate of his minor children and dispose of their property without the aid or sanction of a court. *See* ***Vinyard v. Heard***, 167 S.W. 22, 26 (Tex. Civ. App.–San Antonio 1914), *aff'd*, 212 S.W. 489 (Tex. Comm'n App. 1919, judgm't adopted). Here, the trial court never appointed a guardian of the estates of the minor heirs. Execution of the agreement by a guardian of the minors' estates was necessary for the agreement to be valid and enforceable. *See* ***id***. at 27. However, an invalid family settlement agreement does not divest the trial court of its previously established jurisdiction. *See* ***Browning***, 165 S.W.3d at 346 (judgment is void only when the court had no jurisdiction or no capacity to act); ***Flynt***, 587 S.W.2d at 110.

[1] Jimmy's motion to approve the disclaimer by the minor heirs asserts that Ola Mae's will established a testamentary trust for the benefit of Dub during his lifetime, with remainder outright to John and Jimmy.

Appellants also assert that the disclaimers executed on their behalf were nullities because they were not executed by a guardian of their estates. We agree that only a guardian of the minors' estates could control the estates and that there was no such guardian. *See* ***McKinley***, 136 S.W.2d at 620. However, invalidity of the disclaimers does not cause the trial court to lose jurisdiction. *See* ***Browning***, 165 S.W.3d at 346; ***Kessler v. Tex. Emp'rs' Ins. Ass'n***, 421 S.W.2d 133, 136-37 (Tex. Civ. App.–Eastland 1967, writ ref'd n.r.e.) (procedural irregularity does not render a judgment void).

Appellants further assert that the disclaimers were void because they were not executed with the necessary prior court approval. The pertinent clause of Texas Probate Code Section 37A provides that anyone who intends to disclaim property that he may be entitled to receive as a beneficiary must do so as provided by the probate code "with prior court approval." TEX. PROB. CODE ANN. § 37A(a) (West Supp. 2012). We will assume that Appellants' interpretation of this section of the probate code is correct, and that the court must approve the disclaimers before the heirs execute them. If this provision was not followed and error occurred, it is not fatal to the trial court's jurisdiction. Judgments are not void when rendered in violation of a purely procedural irregularity. *See* ***Kessler***, 421 S.W.2d at 136.

Order and Judgment Not Assailable

The trial court had subject matter jurisdiction as well as personal jurisdiction over the parties. Neither the order approving the disclaimers nor the heirship judgment is void due to jurisdictional defects. Accordingly, because limitations has run, Appellants' attempt to set aside the 1990 order and judgment is an impermissible collateral attack. *See* ***Browning***, 165 S.W.3d at 346. Therefore, the trial court did not err in granting the motions for summary judgment filed by Crockett, John, and Jimmy. *See* ***Nixon***, 690 S.W.2d at 548. We overrule Appellants' first and second issues.

STATUTE OF LIMITATIONS

In their fifth issue, Appellants contend that the trial court erred in granting summary judgment on the basis of limitations. They argue that no limitations period applies to a suit to declare present property rights and there is no limitations period for attacking void judgments. This argument ignores the fact that, before the court could declare their rights, it had to apply the

law and determine what their rights are. And in applying the law in this case, it becomes clear that, due to the passage of time, Appellants have no rights in the property they claim.

This is a suit attacking the outcome of the probate of Ola Mae's estate and not properly characterized as a suit to declare present property rights. As we have explained above, the judgment and order in that probate case are not void. The time for review of that proceeding has passed. *See* TEX. PROB. CODE ANN. § 31 (West 2003) (no bill of review shall be filed after two years from the date of the order or judgment); ***John G. & Marie Stella Kenedy Mem'l Found. v. Fernandez***, 315 S.W.3d 515, 518 (Tex. 2010) (four year statute of limitations applies to equitable bills of review). Appellants argue that their claims for fiduciary breaches and constructive fraud are subject to the discovery rule and Appellees did not negate the facts triggering the discovery rule. Noting the need for finality of probate proceedings, the Texas Supreme Court has refused to apply the discovery rule to claims arising out of probate proceedings, even in the face of fraud allegations. *See* ***Little***, 943 S.W.2d at 419-20.

In their sixth and seventh issues, Appellants assert that Appellees' motions for summary judgment did not address all claims and did not negate all material issues of fact as to all pleaded claims. In his motion for summary judgment, Crockett asserted that Appellants' entire cause of action is barred by the statute of limitations. John, in his motion for summary judgment, argued that the statute of limitations and the doctrine of res judicata apply to prohibit Appellants from asserting claims contrary to the terms of the 1990 order and judgment and therefore all of their claims are barred. In his motion for summary judgment, Jimmy asserted that Appellants' lawsuit is an impermissible collateral attack and is barred by res judicata and the statute of limitations. All of Appellants' causes of action arose out of the actions of Dub, John, and Jimmy with regard to the disposition of Ola Mae's estate in 1990. Even considering that the limitations period did not begin to run until Appellants reached the age of majority, their lawsuit was not timely filed. Accordingly, Appellees met their burden of conclusively establishing the affirmative defense of limitations. *See* ***KPMG Peat Marwick***, 988 S.W.2d at 748. Appellants did not present evidence raising a fact issue to avoid Appellees' limitations defense. *See* ***Palmer v. Enserch Corp.***, 728 S.W.2d 431, 435-36 (Tex. App.–Austin 1987, writ ref'd n.r.e.). Appellees' motions for summary judgment addressed all of Appellants' causes of action, and the trial court did not err in granting summary judgment in favor of Appellees. *See* ***Nixon***, 690 S.W.2d at 548. We overrule

Appellants' issues five, six, and seven. We need not reach Appellants' third and fourth issues. *See* TEX. R. APP. P. 47.1.

CONCLUSION

The County Court at Law of Cherokee County had jurisdiction to render a judgment in the cause disposing of Ola Mae Isaacs' estate in 1990. This suit is an impermissible collateral attack on the 1990 order and judgment. All of Appellants' causes of action are barred by limitations. Accordingly, the trial court did not err in granting Crockett's, John's, and Jimmy's motions for summary judgment. We ***affirm*** the trial court's judgment. All pending motions are overruled as moot.

JAMES T. WORTHEN
Chief Justice

Opinion delivered February 15, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

FEBRUARY 15, 2012

NO. 12-10-00048-CV

IN THE ESTATE OF
JOHN W. ISAACS, DECEASED

Appeal from the County Court at Law
of Cherokee County, Texas. (Tr.Ct.No. P11294)

THIS CAUSE came to be heard on the oral arguments, appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellants, **KALENA CHEYENNE ISSAACS HOOPER and KEISHA DIAN ISAACS SWINFORD,** for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.