

NO. 12-10-00414-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

***BILLY JACK WRIGHT,
APPELLANT***

§

APPEAL FROM THE 369TH

V.

***ANITA MARSH, INDIVIDUALLY AND
IN HER CAPACITY AS PERSONAL
REPRESENTATIVE AND/OR
INDEPENDENT EXECUTRIX OF THE
ESTATE OF JERRELL E. MARSH,
APPELLEE***

§

JUDICIAL DISTRICT COURT

§

ANDERSON COUNTY, TEXAS

NO. 12-10-00367-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE ESTATE OF

§

APPEAL FROM THE

JERRELL E. MARSH,

§

COUNTY COURT

DECEASED

§

ANDERSON COUNTY, TEXAS

MEMORANDUM OPINION

Billy Jack Wright sued Anita Marsh, individually and as independent executrix of the estate of her late husband, Jerrell, for malicious prosecution, claimed to be a creditor of the estate, and attempted to have Anita removed as independent executrix of the estate. Wright appeals from a summary judgment rendered in favor of Anita Marsh, individually and as

independent executrix of the estate of Jerrell Marsh, in the malicious prosecution case, and from the probate order closing the estate. The cases have been consolidated on appeal. In three issues, Wright contends the trial court erred in granting Marsh's motion for summary judgment and denying his motion for partial summary judgment, and that the probate court erred in closing the estate. We affirm.

BACKGROUND

Once friends, the relationship between Wright and the Marshes - Anita, Jerrell, and their son Todd - began to deteriorate in the mid-1990s. In early 2002, the Marshes began to receive letters and notes that they took to be threatening. The Marshes reported these letters to Deputy Chuck Franklin of the Anderson County Sheriff's office. After completing an investigation, Wright was charged with three cases of misdemeanor harassment. A jury found him guilty. This court, however, determined that the evidence was legally insufficient to support the convictions because the cards did not contain a threat to commit bodily injury or commit a felony, and rendered a judgment of acquittal in each case. See *Wright v. State*, No. 12-07-00045-CR, 12-07-00046-CR, 12-07-00047-CR, 2008 Tex. App. LEXIS 8834 (Tex. App.-Tyler Nov. 26, 2008, no pet.) (mem. op., not designated for publication).

Jerrell died in 2006, and Anita applied for probate of his will in the County Court of Anderson County. The probate court appointed her to be independent executrix. On August 4, 2009, in an Anderson County district court, Wright filed a malicious prosecution suit against Anita, individually and as "personal representative" of Jerrell's estate. On October 15, 2009, Anita, claiming no further need for an independent administration of the estate, requested an order closing the administration of the estate. The probate court granted that request shortly thereafter, closing administration of the estate and terminating Anita's power to act as independent executrix. In November 2009, Wright notified the probate court of his claim against the estate and asked the court to reopen the estate and appoint him, or some third party, successor representative of the estate. Several months passed during which the merits were never addressed.

During the same time period, the malicious prosecution case proceeded to summary judgment in the district court. Specifically, the court, on September 16, 2010, granted Anita's

motion for summary judgment on the ground that there is no issue of material fact as to the element of lack of probable cause. The district court rendered a take nothing judgment against Wright in his malicious prosecution case. Based on that judgment, Anita requested that the probate court dismiss Wright's claims regarding the estate for lack of standing. The probate court rendered an order determining that Wright is not a creditor of the estate and has no standing to bring a motion to remove the independent executrix of the estate. The court further ordered that the estate was fully administered and closed.

SUMMARY JUDGMENT

In his first issue, Wright contends that the trial court erred in granting Anita's motion for summary judgment. In her amended motion for summary judgment, Anita claimed that she was entitled to summary judgment because she negated two elements of Wright's cause of action. Specifically, she asserted that the evidence established that she and her husband had probable cause to instigate the prosecution and the evidence established that they did not initiate or procure the prosecution. Wright filed a response to Anita's motion asserting, among other arguments, that there is a fact question as to whether the Marshes initiated or procured the prosecution. He argued that the Marshes "badgered, bugged, confronted and nagged Chuck Franklin to file criminal charges against" Wright. He further argued that the Marshes procured an illicit prosecution by failing to inform the prosecutor that another individual, Dianne Grizzle, may have written some of the cards. In support of their respective arguments, Marsh and Wright presented numerous exhibits.

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). The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact concerning one or more essential elements of the plaintiff's claims and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *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. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam); *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). In reviewing a summary judgment, we consider all grounds presented to the trial court and preserved on appeal in the interest of judicial economy. *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005).

Applicable Law

To prevail in a malicious prosecution case, the plaintiff must establish that (1) a criminal prosecution was commenced against the plaintiff; (2) the prosecution was initiated or procured by the defendant; (3) the prosecution terminated in favor of the plaintiff; (4) the plaintiff was innocent; (5) there was no probable cause for the prosecution; (6) the defendant acted with malice in filing the charge; and (7) the plaintiff suffered damages as a result of the prosecution. *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 517 (Tex. 1997). Procurement, which is the causation element of a malicious prosecution action, occurs when a person's actions are enough to cause the prosecution, and but for the person's actions the prosecution would not have occurred. *Browning-Ferris Indus., Inc. v. Lieck*, 881 S.W.2d 288, 293 (Tex. 1994). Prosecutors have broad discretion in deciding which cases to prosecute. *Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004). If the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether to prosecute and what charge to file generally rests entirely within his discretion. *Id.*

Further, a person does not procure a prosecution when the decision to prosecute is left to the discretion of a law enforcement official or grand jury unless the person provides information he knows is false. *Lieck*, 881 S.W.2d at 293. That is, if a person knowingly provides false information to those responsible for procuring the prosecution, the person has procured the

prosecution for purposes of a malicious prosecution action. *King v. Graham*, 126 S.W.3d 75, 78 (Tex. 2003) (per curiam). However, that person cannot be said to have caused the prosecution if the false information was immaterial to the decision to prosecute. *Id.*

Summary Judgment Evidence

Wright included the transcript of the October 25, 2005 guilt/innocence phase of the criminal trial as an exhibit supporting his response. The transcript shows that while the jury waited in another room, defense counsel argued that the State must elect which specific allegation it would be prosecuting, that is, which specific three written items constituted the alleged offenses against Jerrell, Anita, and Todd. Defense counsel argued that all but three of the writings were extraneous. The judge ordered the prosecutor to pick one event for each of the three victims. The prosecutor told the judge that the vast majority of the items could not be tied directly to Wright. The record indicates that, before the trial began, Exhibit 2 was chosen as the basis for the cause of action naming Anita as the victim, Exhibit 13 was chosen as the basis of the cause of action naming Jerrell as the victim, and Exhibit 1 was chosen as the basis for the cause of action naming Todd as the victim.

The Marshes included as part of their summary judgment evidence excerpts from Detective Larry Mars's testimony in Wright's criminal trial. After explaining that he has specialized training in handwriting examination, he testified that Exhibits 2 through 8 and 11 through 13 were definitely written by Wright. He also testified that there was a moderate degree of possibility that Exhibit 1 was written by Wright and a high degree of probability that Exhibit 9, an envelope, was addressed by Wright.

In her affidavit, Anita Marsh explained that she and her husband requested the sheriff's office to determine if Wright was responsible for the harassment. She stated that they also received correspondence that she suspected may have been sent by Dianne Grizzle, a good friend of Wright. Anita said that Deputy Franklin requested Grizzle's handwriting exemplar, and she sent him a copy of a Christmas card she had received from Grizzle. She explained that, three years later, they were notified by the Anderson County District Attorney's office that the case was going to trial. The day of the trial, she, Jerrell, and Todd spoke to the prosecutor for approximately ten minutes. They did not discuss the evidence that would be presented at trial. Neither she nor Jerrell filed any formal complaint or information against Wright. She stated that,

after they took the first letter to Franklin, all decisions on how to proceed were made by someone at the sheriff's office or the district attorney's office.

In her deposition testimony, Sharon Coody, Jerrell's ex-wife, explained that Jerrell called her and asked for a handwriting exemplar from Grizzle. She had an envelope with Grizzle's handwriting on it. Deputy Franklin also called her and asked about Grizzle's handwriting and if she had a sample. Franklin told her they were trying to prove Grizzle was involved, so she knew Grizzle was a suspect. She sent the envelope to either Jerrell or Franklin.

In his deposition, Deputy Franklin explained that he was first introduced to the case when Anita showed him two or three postcards, said they felt threatened by them, and claimed that Wright had sent them. She wanted to file a complaint against Wright. In response, Franklin "did a report," thinking that it was a "heat-of-the-moment problem" and that it would "die down." Franklin stated that they were adamant that charges be filed because they felt threatened or harassed. The Marshes brought in additional "things" as they received them. They named Wright and his wife, and Dianne Grizzle, as suspects. The Marshes felt those three were sending the writings to them. Some of the writings looked different from the others. Some were purported to be Grizzle's. Franklin explained that "they wanted [Wright] charged with it because in their mind at the time before Mr. Mars did the handwriting analysis, they recognized his writing, in their words for sure, that Billy Jack Wright is the one that wrote those postcards and stuff." At some point, he spoke to Wright, who denied sending the items, and set up a meeting with Mars to analyze Wright's handwriting. All of the writings that came in to him were sent to Detective Mars. Mars was unable to say conclusively that Grizzle or Mrs. Wright had written any of the letters. However, when Franklin received Mars's report stating conclusively that some of the items were written by Wright, Franklin felt it was time to take the case to the district attorney's office. Franklin explained that, in his judgment, the Marshes were being harassed in violation of the penal code. Franklin decided to give the case to the district attorney's office and let them determine whether to prosecute. He explained that he had a lot of discretion and if Mars had said it was all inconclusive, he would have closed the case out.

Franklin also testified that the Marshes brought in two hickory nuts and a bra with the cups cut out that had been mailed to them. At that point, he and the Marshes both felt that "enough's enough." He said that when a person is attacked in that manner, it is time to do

something about it.¹ However, he also stated that he could not remember if he had already obtained a handwriting sample from Wright or if the case had already been sent to the DA's office at that point. Although Wright denied any involvement, Franklin explained that "the evidence is what you have to look at, and the evidence was that he wrote some of that stuff."

Franklin never contacted Dianne Grizzle to get a handwriting analysis because they never had enough to say that she did anything. He thought "that all began to come undone after the case had been presented to the DA's office." "And at that point, they would have been the ones to contact Ms. Grizzle and have her do that." He further explained that "a lot of the stuff about the ladies came up after it went to the DA's office." So, initially, the Marshes felt Wright was responsible and then later on, after other letters were sent, they said there was a possibility that Mrs. Wright or Grizzle might be involved. There was probable cause to believe a crime had been committed so he gave the file to the DA's office. He said that whether to proceed to prosecution is for the district attorney's office to decide. He stated that he had no evidence that Grizzle wrote some of the letters. However, it was apparent that some of the printed handwriting on cards the Marshes received was different from handwriting on other cards they received. Franklin filed the case on the basis of Mars's determination that Wright was involved. Franklin did not know which items Mars linked to Wright. His report disappeared, and he did not know if there was anything in his report about Grizzle. He said there was a very good possibility that the report mentioned that Dianne Grizzle was a suspect.

In Deputy Franklin's affidavit, he explained that as the Marshes continued to receive letters, they brought them to him, and it was apparent that they were not all in the same handwriting. He stated that, before charges were filed against Wright, the Marshes told him that some of the letters could have been written by Dianne Grizzle. He said that Anita provided him with a handwriting exemplar she knew was Grizzle's, and Jerrell's ex-wife also provided an envelope with handwriting on it known to be Grizzle's. Those exemplars were given to Larry Mars, the handwriting expert, before any charges were filed against Wright. Detective Mars told Franklin that some of the writing was Wright's and some was inconclusive.

¹ Anita had been diagnosed with breast cancer, and this was perceived as a reference to her medical condition.

The prosecutor in the criminal trial stated in his first affidavit that his decision to prosecute the case was based on the information he received from the sheriff's office and the testimony of his handwriting expert, Larry Mars. He did not participate in the investigation. He briefly spoke to the Marshes prior to trial, but he did not question them regarding whether they recognized the handwriting on any of the correspondence admitted into evidence. He stated that his decision to prosecute this case was based on his duty as an assistant criminal district attorney, the information he received from the sheriff's office and Mars, and his legal research. In his review of the controlling law, he concluded he had reasonable grounds to believe Wright was guilty of the crime of harassment.

In her deposition testimony, Anita stated that trial Exhibits 1, 3, 4, 5, 9, 10, 12, and 15 are in Wright's handwriting. She had received a Christmas card from Wright in 1993 or 1994, which she had given to the sheriff's office, and she recognized the handwriting on Exhibit 1 as Wright's. She then compared Exhibit 1 with Exhibits 3, 4, 5, 10, 12, and 15 and determined that Wright also wrote those exhibits. She also said the stick horse figure on Exhibit 5 represents the horse belonging to Wright that was killed. She denied ever having seen Exhibit 10, but felt that some of the references in it coincided with certain events. She did not remember which exhibit was the first they received in the mail.

Additionally, Anita testified by deposition that Exhibits 2, 6, 7, 8, 11, and 13 are in Dianne Grizzle's handwriting. She explained that she had immediately recognized the handwriting when she received the items in the mail. Jerrell also recognized Dianne's handwriting. Then, sometime in 2006, approximately two months after Jerrell passed away, Jerrell's three daughters recognized Dianne's handwriting and confirmed that those items were in Dianne's handwriting. Jerrell passed away after the guilt/innocence phase of the criminal trial, but before the sentencing phase.

Anita explained that she and her husband gave the first card to Franklin after they received it and her husband took the other items to Franklin later, after they received more of them. She and Jerrell discussed the fact that they thought some of the items were written by Dianne. She said Jerrell told Franklin that he suspected some were written by Dianne. She further stated that they suspected that Franklin told the district attorney. So when they went to trial, they assumed that the prosecutor knew. They did not speak to a prosecutor until the day

they went to trial. When she testified at trial, she was not asked who wrote the cards and letters, and she did not tell the prosecutor, defense attorney, judge, or jury that she suspected Dianne had written some of the exhibits. Anita stated that she did not, before or after the trial, “express any doubts” to any law enforcement officer that someone other than Wright may have written certain trial exhibits.

The prosecutor executed a second affidavit after reading Anita’s deposition. He opined that, during the preparation for the criminal trial and during the trial, the Marshes “had an opportunity to speak with” him. They never told him, the judge, the jury, or the defense attorney that some of the exhibits were written by someone other than Wright. Had he known that they believed some of the exhibits had been written by Dianne, he would have re-evaluated the case and “would likely have lost confidence in the State’s handwriting expert.” He probably would have dismissed the case. He found no documents in Franklin’s file indicating that the Marshes had told Franklin that they believed some of the items were written by someone other than Wright.

Ronald Grizzle, Dianne’s husband, testified by deposition. Ronald is a close friend of Wright’s. He was Jerrell’s cousin; however, they ceased to be friendly in the 1990s. He admitted that he does not like Anita. Ronald looked at numerous exhibits and said that none looked like his wife’s handwriting. He was shown a copy of the envelope produced by Sharon Coody and said he could not say whether the handwriting on it was Dianne’s or not.

Wright, in his deposition testimony, admitted that he did not know what the Marshes told the investigators or the assistant district attorney working on the case.

Discussion

The trial court granted Anita’s motion on the element of lack of probable cause and denied it as to the initiate or procure element. However, we will discuss the initiate or procure element because it is dispositive of the case. *See Rubio*, 185 S.W.3d at 846.

A person does not procure a prosecution when the decision to prosecute is left to the discretion of a law enforcement official unless the person provides information he knows is false. *Lieck*, 881 S.W.2d at 293. Here, the investigator determined there was probable cause to send the case to the district attorney’s office, and the prosecutor made the decision to prosecute. *See Neal*, 150 S.W.3d at 173. Therefore, the Marshes could not have procured the prosecution

unless they knowingly provided false information. The record shows that, before the criminal trial in which Wright was prosecuted for harassment, Anita and Jerrell believed that Dianne authored some of the cards they had received. The record also shows that they told Franklin. Franklin, though not certain, thought he included that information in the report that he turned over to the district attorney's office. The fact that the prosecutor had no knowledge of the other potential defendants does not lead to a conclusion that the Marshes wrongfully accused Wright of harassing them or procured the prosecution. The Marshes reported the harassment and gave the names of three potential suspects to the law enforcement officer investigating the case. The assistant district attorney chose to prosecute Wright for harassment based on the information, albeit incomplete, that he received from the sheriff's office and the analysis of Mars, the handwriting expert. We decline to place on the victim the responsibility for confirming that an investigator has relayed all potentially important information to the prosecutor. Franklin determined that he had cause to believe that Wright wrote some of the letters, and he turned the case over to the district attorney's office. The prosecutor determined that Wright should be prosecuted. There is no evidence that the Marshes provided false information. Thus, the evidence shows as a matter of law that the Marshes did not procure the prosecution. *See Lieck*, 881 S.W.2d at 293.

Wright complains that Anita testified at the trial without mentioning that Dianne was a suspect. Anita testified at the guilt/innocence phase of the trial that Wright "sent me letters." This statement is not untrue even if Dianne also sent letters. Anita also said they were there, at trial, "because Wright has been harassing" them. Again, the statement is not untrue even if he had an accomplice. She said, "He sent cards calling me — like I was going to go to hell. I was a Jezebell[sic]. My son and I were going to go to hell if he did not repent, and they just sent me different cards saying things, religious, relating to religious sayings." It is not entirely clear which cards Anita referred to. However, the record shows that Exhibit 13 contains a reference to "Jezebell," and Exhibit 13 is among the exhibits that Anita later identified as having been written by Dianne. Exhibit 1, which she said was written by Wright, states that Anita and her son "will never receive salvation" and "will suffer eternally." Further, most of the cards contain at least vague religious references. The Marshes began receiving the cards in early 2002. Anita's references to the cards were made before the prosecutor showed her the cards on the witness

stand. It is doubtful that, in 2005, Anita remembered which comments were written in Dianne's handwriting and which were written in Wright's handwriting, making this seem less like a deliberate false statement. Further, she used the word "they" as well as "he" in referring to the sender.

Wright asserts that Anita and Jerrell withheld from the prosecutor, judge, and jury the true identity of the writer of Exhibits 2 and 13. This, he contends, constitutes proof of their intent and actions to initiate and procure prosecution of Wright, and creates a fact question warranting reversal of the summary judgment. Wright argues that, at the sentencing phase, Anita told the prosecutor and the judge "that she received nothing from Diane [sic] Grizzle." Wright takes the testimony out of context. At the time, Anita was being questioned by the prosecutor. He asked if she knew Dianne, how she knew her, whether they were friends, and whether she had the opportunity to view her handwriting. Anita was asked how she became familiar with Dianne's handwriting. She explained that she had observed Dianne write checks and had received Christmas cards from her. Anita said the cards contained no other writing except the family name. She answered in the negative when he asked whether there was "[a]ny other handwriting, substantive, lengthy handwriting that she would send you or that you know came from her[.]" The questioning then moved to another subject. From the context, it appears the topic was Anita's familiarity with Dianne's handwriting. However, the prosecutor never attempted to show the relevance of Dianne's handwriting or of Anita's ability to recognize it. Furthermore, none of the exhibits contained more than three sentences and cannot be construed as "substantive, lengthy handwriting." We do not construe Anita's answers as an affirmative statement that she had received no cards or letters of a harassing nature from Dianne.

Moreover, the Marshes did not know which specific exhibits were chosen as the basis for prosecuting Wright. The Marshes did not know that the prosecutor was unaware that they named Dianne and Mrs. Wright as potential suspects when they spoke to Franklin. The prosecutor never asked Anita or Jerrell who, besides Wright, might have sent the letters. Furthermore, if the prosecutor had chosen from among Exhibits 1, 3, 4, 5, 9, 10, 12, and 15, which the State's evidence shows were all written by Wright, as the exhibits to support the three prosecutions, then the fact that Dianne wrote any of the other cards would be completely immaterial. So under that circumstance, the failure to mention that she thought Dianne may have written some of the cards

would not lead to the conclusion that the Marshes procured the prosecution. See *King*, 126 S.W.3d at 78. It makes little sense to say the Marshes provided false information simply because the prosecutor, for reasons not shown by the record, did not have access to all information discovered during the investigation or because he erroneously based his case on the wrong exhibits.

The Marshes did not provide false information. Anita presented evidence showing, as a matter of law, they did not procure the prosecution of Wright. Wright did not present evidence raising a fact question on the element of procurement. The trial court did not err in granting summary judgment for Anita. See *Nixon*, 690 S.W.2d at 548; *City of Houston*, 589 S.W.2d at 678-79. We overrule Wright's first issue.

PROBATE ORDER

In his third issue, Wright asserts that the probate court abused its discretion in closing Jerrell's estate administration and in refusing to reopen it. He contends that he possesses the standing of a contingent estate creditor whose claim should be addressed on its merits by the probate court. He requests instructions to the probate court to vacate its closing order and its orders denying Wright's motion to reopen, and to reinstate Wright's creditor's claim pending the outcome of his malicious prosecution lawsuit.

On May 24, 2006, the probate court entered an order admitting Jerrell's will to probate and appointing Anita independent executrix. Anita filed an application to close the estate on October 15, 2009, two months after Wright filed his suit for malicious prosecution. On October 19, 2009, the probate court entered an order closing administration of the estate. Thereafter, Wright filed a notice of his claim in the probate court and a motion to vacate the October 19 order. Almost a year later, after the summary judgment had been rendered in Anita's favor in the malicious prosecution case, a hearing was held in the probate court. The probate court determined that Wright did not have standing as a creditor and his claims were barred. The court rendered an order that the estate, having been fully administered, was closed.

Standing is a necessary element of subject matter jurisdiction, and it involves the court's power to hear a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443, 445 (Tex. 1993). For any person to maintain a suit, it is necessary that he have standing to litigate the

matters in issue. *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). In probate cases, the probate code requires the person to qualify as an “interested person.” *A & W Indus., Inc. v. Day*, 977 S.W.2d 738, 741 (Tex. App.–Fort Worth 1998, no pet.). The probate code defines “interested persons” as “heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered.” TEX. PROB. CODE ANN. § 3(r) (West Supp. 2011).

According to Wright, he has standing as a creditor of the estate as a result of the malicious prosecution lawsuit. As we explained above, however, the trial court’s take nothing judgment against him stands. Therefore, he is not a creditor of the estate and has no standing to request the probate court to reopen the estate administration. *See id.* Accordingly, we overrule Wright’s third issue.

CONCLUSION

The evidence establishes that the Marshes did not initiate or procure Wright’s prosecution. Because his malicious prosecution suit has been resolved against him, Wright does not have standing as a creditor of Jerrell’s estate. Due to our disposition of Wright’s first issue, we need not reach his second issue. *See* TEX. R. APP. P. 47.1. Having found no error, we *affirm* the trial court’s summary judgment and the probate court’s order closing the estate of Jerrell Marsh.

JAMES T. WORTHEN
Chief Justice

Opinion delivered May 9, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)