

**NO. 12-11-00107-CV**

**IN THE COURT OF APPEALS**

**TWELFTH COURT OF APPEALS DISTRICT**

**TYLER, TEXAS**

*ELEXIS WHITE,  
APPELLANT*

§

*APPEAL FROM THE*

*V.*

§

*COUNTY COURT AT LAW #2*

*AUDREY NELDA WHITE,  
APPELLEE*

§

*ANGELINA COUNTY, TEXAS*

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***MEMORANDUM OPINION***

Elexis White appeals the trial court's orders on arrears and for turnover relief. On appeal, Elexis presents three issues. We dismiss for want of jurisdiction.

**BACKGROUND**

On January 26, 1965, Roy A. White and Audrey Nelda White (now Davenport) were divorced. Roy and Audrey were the parents of five children, and the divorce judgment ordered Roy to pay \$150.00 each month in child support. Roy married Elexis in 1988, and died on June 17, 2008, as a result of injuries sustained in an automobile accident.

On September 17, 2010, Audrey filed a notice of an application for a judicial writ of withholding against Roy's estate for payment of overdue child support. The notice was served on Elexis, individually and as the independent executrix of the estate. Elexis, in her individual capacity, filed a proposed motion to stay the issuance of the writ. She alleged that she was "not the obligor, the person who is required by a court order to support" the children named in the notice. Audrey responded that Elexis's proposed motion to stay was untimely and improper and, thus, the child support arrearage was established as a matter of law.

On January 18, 2011, Audrey filed an amended motion for a determination of arrears, stating that Roy failed to pay any of the child support ordered under the divorce judgment. She

requested that the trial court grant her turnover relief against the estate, a judgment debtor. Audrey served the motion on Elexis, individually and as the independent executrix of the estate. Elexis filed an answer in her individual capacity, but did not file an answer on behalf of the estate.

After a hearing, the trial court granted an order on arrears, finding that a verified motion to stay was not timely filed by the estate and that the amount of child support arrearages was determined as a matter of law. Thus, the trial court granted Audrey a judgment for child support arrearages against the estate, including accrued interest, court costs, and attorney's fees. Further, the trial court ordered that the child support arrearages be payable through a judicial writ of withholding from earnings and that the writ be binding on the estate. The trial court also granted an order for turnover relief against the nonexempt property of the estate, including any personal injury claims arising out of the accident that occurred on June 12, 2008. The trial court also filed findings of fact and conclusions of law. Elexis, as independent executrix of the estate, filed a motion for new trial, which was denied. She also filed a notice of appeal in her individual capacity. This appeal followed.

#### STANDING

In her brief, Audrey argues that Elexis lacks standing to bring this appeal in her individual capacity because she is not the child support obligor. Subject matter jurisdiction is an issue that may be raised for the first time on appeal, and may not be waived by the parties. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993). Standing is a component of subject matter jurisdiction; therefore, standing cannot be waived and may be raised for the first time on appeal. *Id.*

“Texas courts have long held that an appealing party may not complain of errors that do not injuriously affect it or that merely affect the rights of others.” *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 843 (Tex. 2000). The right to appeal rests only in an aggrieved party to a lawsuit. *Cnty. of El Paso v. Ortega*, 847 S.W.2d 436, 442 (Tex. App.—El Paso 1993, no writ) (citing *S. Nat'l Bank of Houston v. City of Austin*, 582 S.W.2d 229, 235 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.)). An aggrieved party is one who has a justiciable interest recognized by law that is injuriously affected by the trial court's judgment. *Id.*; *Hanna v. Godwin*, 876 S.W.2d

454, 457 (Tex. App.—El Paso 1994, no writ). Texas courts only have power over litigants with justiciable interests. *Hanna*, 876 S.W.2d at 457.

An “obligor” is a person required to make payments under the terms of a support order for a child. *See* TEX. FAM. CODE ANN. § 101.022 (West 2008). Here, under the terms of the 1965 divorce judgment, Roy was the obligor. If the child support obligor dies before the child support obligation terminates, the remaining unpaid balance of the child support obligation becomes payable on the date the obligor dies. *See* TEX. FAM. CODE ANN. § 154.015(b) (West 2008). The obligee has a claim, on behalf of the child, against the deceased obligor’s estate for the unpaid child support obligation. *See* TEX. FAM. CODE ANN. § 154.015(e). Thus, after Roy died, Audrey, as the obligee, had a claim against the estate for the unpaid child support obligation. *See* TEX. FAM. CODE ANN. § 154.015(b), (e).

In this case, Elexis is not the child support obligor, and alleged that fact in her proposed motion to stay. Moreover, the orders on arrears and for turnover relief were not entered against Elexis, but against the estate. Elexis also does not explain how she has a justiciable interest in the orders on arrears and for turnover relief or how these orders would prejudice, injure, or affect her. *See Hanna*, 876 S.W.2d at 457; *Cnty. of El Paso*, 847 S.W.2d at 442. Because Elexis is not the child support obligor or the person against whom the orders on arrears and for turnover relief were entered, she does not have standing in her individual capacity to challenge these orders against the estate on appeal.

Elexis maintains, however, that she is acting as independent executrix in this appeal and therefore has standing to challenge the trial court’s orders. It is true that Elexis identifies herself in her appellate brief as the independent executrix of Roy’s estate. However, Elexis signed her notice of appeal in her individual capacity only. Elexis in her individual capacity is, in law, not the same person as Elexis in her capacity as independent executrix of Roy’s estate. *See Elizondo v. Tex. Natural Res. Conservation Comm’n*, 974 S.W.2d 928, 931 (Tex. App.—Austin 1998, no pet.) (holding that appellant who did not perfect appeal in representative capacity was before court in individual capacity only). Therefore, because Elexis did not perfect an appeal in her representative capacity, the only appellant before this court is Elexis in her individual capacity. *See id.* Accordingly, we are without jurisdiction to consider this appeal.

**DISPOSITION**

Having held that Elexis lacks standing to appeal in her individual capacity and that she did not perfect the appeal in her representative capacity, we *dismiss* the appeal for *want of jurisdiction*.

**SAM GRIFFITH**

Justice

Opinion delivered May 16, 2012.

*Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.*

(PUBLISH)