

**COURT OF APPEALS OF TEXAS, SECOND DISTRICT OF TEXAS, FORT WORTH**

**Estate of John David Harris, Deceased**

No. 02-13-00294-CV · No. No. 02-13-00294-CV · Decided October 3, 2013

**SUMMARY**

The Texas Court of Appeals, Second District, dismissed David Glen Harris’s appeal from an order denying his motions for appointment of counsel in a probate proceeding. The court held that the order was not a final judgment or an appealable interlocutory order and therefore dismissed the appeal for want of jurisdiction.

**CASE DETAILS**

|                       |                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Texas, Second District of Texas, Fort Worth                                                                  |
| WRITING FOR THE COURT | Per curiam; McCoy, J.; Meier, J.; Gabriel, J.                                                                                    |
| JURISDICTION          | Texas                                                                                                                            |
| DECIDED               | October 3, 2013                                                                                                                  |
| DOCKET                | No. 02-13-00294-CV                                                                                                               |
| DISPOSITION           | dismissed                                                                                                                        |
| PROCEDURAL POSTURE    | Pro se appeal from an order denying the appellant's first and second motions for appointment of counsel in a probate proceeding. |
| STANDARD OF REVIEW    | The court independently examined whether it had subject-matter jurisdiction over the appeal.                                     |
| PRECEDENTIAL VALUE    | Nonprecedential memorandum opinion                                                                                               |
| PARTIES               | David Glen Harris                                                                                                                |

**TOPICS**

- probate procedure
- appellate jurisdiction
- interlocutory appeal
- probate
- appellate procedure

**PRACTICE AREAS**

- Probate
- Appellate procedure
- Civil procedure

**QUESTIONS PRESENTED**

1. Whether the probate court's order denying motions for appointment of counsel was a final judgment or an appealable interlocutory order.
2. Whether the court of appeals had subject-matter jurisdiction over the appeal.

#### **HOLDINGS**

1. An order denying motions for appointment of counsel in this probate proceeding was neither a final judgment nor an appealable interlocutory order, so the court of appeals lacked jurisdiction and was required to dismiss the appeal.

#### **FACTUAL BACKGROUND**

David Glen Harris, acting pro se, sought appointment of counsel in an estate proceeding and filed first and second motions for that relief. The probate court denied both motions in an August 1, 2013 order, which did not dispose of the entire proceeding.

#### **PROCEDURAL HISTORY**

The Probate Court No. 1 of Tarrant County entered an August 1, 2013 order denying David Glen Harris's motions for appointment of counsel. The court of appeals notified Harris that it appeared to lack jurisdiction because the order was neither a final judgment nor an appealable interlocutory order. After Harris filed a response that did not establish appellate jurisdiction, the court dismissed the appeal for want of jurisdiction.

#### **DISPOSITION**

dismissed

#### **CASES CITED**

- *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)
- *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)
- *Okumu v. Wells Fargo Bank, N.A.*, No. 02-09-00384-CV, 2010 WL 87735, at \*1 (Tex. App.—Fort Worth Jan. 7, 2010, no pet.) (mem. op.)

#### **OPINION**

PER CURIAM.

COURT OF APPEALS SECOND DISTRICT OF TEXAS FORT WORTH NO. 02-13-00294-CV  
ESTATE OF JOHN DAVID HARRIS, DECEASED FROM PROBATE COURT NO. 1 OF  
TARRANT COUNTY MEMORANDUM OPINION 1 Pro se appellant David Glen Harris  
attempts to appeal from the August 1, 2013 order denying his first and second motions for  
appointment of counsel.

On August 23, 2013, we notified appellant of our concern that we lacked jurisdiction over the  
appeal because the order did not appear to be a final judgment or appealable interlocutory order.

See Tex. R. App. P. 42.3(a); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001).

We informed appellant that the appeal was subject to dismissal for want of jurisdiction unless 1 See Tex. R. App. P. 47.4. he or any party desiring to continue the appeal filed with the court a response showing grounds for continuing the appeal on or before September 3, 2013. Appellant has filed a response, but it does not show grounds for continuing the appeal, and none of the authorities cited in his response support a finding of jurisdiction in this case.

See Tex. Prob. Code Ann. § 3(bb) (West Supp. 2012) (defining “probate proceeding”); cf. id. § 34A (West 2003) (setting out when an attorney ad litem may be appointed), § 53(b)–(c) (West 2003 & Supp. 2012) (same); *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995) (requiring either express statutory permission or disposal of all issues in a particular phase of probate proceedings for interlocutory probate judgment to be appealable); *Okumu v. Wells Fargo Bank, N.A.*, No. 02-09-00384-CV, 2010 WL 87735, at \*1 (Tex.

App.—Fort Worth Jan. 7, 2010, no pet.) (mem. op.) (noting that exception to the “one final judgment” rule exists in probate cases because of the need to review controlling, intermediate decisions before an error can harm later phases of the proceeding).

Therefore, we dismiss the appeal for want of jurisdiction. See Tex. R. App. P. 42.3(a), 43.2(f). PER CURIAM PANEL: MCCOY, MEIER, and GABRIEL, JJ. DELIVERED: October 3, 2013 2