

COURT OF APPEALS OF THE NINTH DISTRICT OF TEXAS AT BEAUMONT

In the Estate of James E. Farmer A/K/A Pete Farmer

No. 09-18-00314-CV · No. No. 09-18-00314-CV · Decided November 1, 2018

SUMMARY

The Ninth District Court of Appeals of Texas dismissed an appeal from an interlocutory probate order for lack of jurisdiction. The court held that the order did not dispose of claims concerning probate assets or attorneys' fees and therefore did not conclude a discrete phase of the probate proceedings.

CASE DETAILS

COURT	Court of Appeals of the Ninth District of Texas at Beaumont
WRITING FOR THE COURT	Steve McKeithen; Steve McKeithen, C.J.; Kreger, J.; Horton, J.
JURISDICTION	Texas
DECIDED	November 1, 2018
DOCKET	No. 09-18-00314-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from an interlocutory order granting in part and denying in part competing motions for summary judgment in a probate proceeding; the appellee moved to dismiss for lack of appellate jurisdiction.
STANDARD OF REVIEW	The court applied the jurisdictional and finality rules governing appeals from probate orders; no separate standard of review for the summary-judgment rulings was reached.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status not otherwise specified in the opinion text.
PARTIES	Angela Khalil, Ryan Farmer v. Lisa Ann Farmer Hunt, Lorraine Farmer

TOPICS

[probate procedure](#) [appellate jurisdiction](#) [interlocutory appeal](#) [summary judgment](#) [civil procedure](#)

PRACTICE AREAS

[Probate](#) [Civil procedure](#) [Appellate jurisdiction](#)

QUESTIONS PRESENTED

1. Whether the trial court's partial summary-judgment order was final and immediately appealable in the probate proceeding.
2. Whether the appellate court had jurisdiction when the order did not dispose of all issues in a particular phase of the probate proceedings.

HOLDINGS

1. The order was interlocutory and not subject to immediate appeal because it did not dispose of all issues in a particular phase of the probate proceedings.
2. The Court of Appeals lacked jurisdiction over the interlocutory order and dismissed the appeal without reaching the merits.

KEY QUOTATIONS

“The order is interlocutory and not subject to immediate appeal if it “does not end a phase of the proceedings, but sets the stage for the resolution of all proceedings[.]”” (at 2)

“We conclude the trial court’s order is interlocutory and not subject to immediate appeal because it does not dispose of all issues in a particular phase of the proceedings below.” (at 2)

“We grant the motion to dismiss and dismiss the appeal for lack of jurisdiction without reference to the merits.” (at 2)

FACTUAL BACKGROUND

The proceeding involved a petition for declaratory relief and a demand for an accounting concerning the estate of James E. Farmer, including disputes over a joint will and the characterization of non-probate assets. The trial court partially resolved competing summary-judgment motions and ordered that plaintiffs take nothing on claims seeking recovery of non-probate property or assets. Claims concerning probate assets and attorney's fees remained unresolved.

PROCEDURAL HISTORY

The 356th District Court of Hardin County signed an order addressing partial summary judgment motions, ordering that plaintiffs take nothing on claims seeking non-probate property or assets, and rendering declaratory judgment concerning a joint will and characterization of non-probate assets. The order did not resolve claims involving probate assets, the demand for an accounting, the petition for declaratory judgment as to probate assets, or claims for attorney's fees. The plaintiffs appealed, and the defendants filed notices of appeal subject to dismissal motions. The Court of Appeals granted the motion to dismiss and dismissed the appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Lehmann v. Har-Con Corp., 39 S.W.3d 191, 192, 195 (Tex. 2001)
- Crowson v. Wakeham, 897 S.W.2d 779, 783 (Tex. 1995)
- De Ayala v. Mackie, 193 S.W.3d 575, 579 (Tex. 2006)

OPINION

PER CURIAM.

In The Court of Appeals Ninth District of Texas at Beaumont _____ NO. 09-18-00314-CV _____ IN THE ESTATE OF JAMES E. FARMER A/K/A PETE FARMER

On
Appeal from the 356th District Court Hardin County, Texas Trial Cause No. 57314

MEMORANDUM OPINION This is a probate proceeding involving a petition for declaratory relief and demand for an accounting.

On July 24, 2018, the trial court signed an order granting in part and denying in part the motion for partial summary judgment of plaintiffs Angela Khalil and Ryan Farmer, granting in part and denying in part the motions for summary judgment of defendants Lisa Ann Farmer Hunt and Lorraine Farmer, ordering that plaintiffs take nothing on their claims to the extent those claims seek to recover non-probate property or assets, and rendering declaratory judgment as to a joint will and characterization of non-probate assets.

On August 21, 2018, Angela 1 Khalil and Ryan Farmer filed a notice of appeal asserting that the trial court's order disposed of all issues in the case. Lisa Ann Farmer Hunt and Lorraine Farmer filed notices of appeal subject to motions to dismiss the appeal. Hunt filed a motion to dismiss the appeal. She contends that the trial court's order neither disposed of plaintiffs' claims, demand for accounting, and petition for declaratory judgment as to probate assets, nor disposed of defendants' claims for attorneys' fees.

Hunt alleges that the language in the order stating that all other relief requested and not therein granted is denied does not make the order a final order because it follows a summary judgment proceeding rather than a trial on the merits. No response has been filed. Generally, appeals may be taken only from final judgments. Lehmann v. Har-Con Corp., 39 S.W.3d 191, 195 (Tex.

2001). In probate proceedings, however, "multiple judgments final for purposes of appeal can be rendered on certain discrete issues." Id. at 192. If there is an express statute, such as the one for the complete heirship judgment, declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question

may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

Crowson v. Wakeham, 897 S.W.2d 779, 783 (Tex. 1995). The order is interlocutory and not subject to immediate appeal if it “does not end a phase of the proceedings, 2 but sets the stage for the resolution of all proceedings[.]” De Ayala v. Mackie, 193 S.W.3d 575, 579 (Tex. 2006). None of the appellants or cross-appellants have identified a statute that makes the order appealable at this time.

See, e.g., Tex. Est. Code Ann. § 32.001(c) (West 2014). The order does not dispose of claims relating to probate assets or attorneys’ fees. We conclude the trial court’s order is interlocutory and not subject to immediate appeal because it does not dispose of all issues in a particular phase of the proceedings below.

We grant the motion to dismiss and dismiss the appeal for lack of jurisdiction without reference to the merits. APPEAL DISMISSED. _____ STEVE McKEITHEN
Chief Justice Submitted on October 31, 2018 Opinion Delivered November 1, 2018 Before
McKeithen, C.J., Kreger and Horton, JJ. 3