

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In the Estate of Carlos Aguilar

No. 04-15-00222-CV · No. 04-15-00222-CV · Decided June 3, 2015

SUMMARY

The Fourth Court of Appeals of Texas dismissed an appeal from a probate court discovery order for want of jurisdiction. The court held that the order was not a final, appealable order and that the appellants failed to show cause why the appeal should not be dismissed.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Marialyn Barnard; Rebeca C. Martinez; Patricia O. Alvarez
JURISDICTION	Texas
DECIDED	June 3, 2015
DOCKET	04-15-00222-CV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed from a probate court discovery order. The appellee moved to dismiss for want of jurisdiction on the ground that the order was interlocutory and nonappealable.
STANDARD OF REVIEW	The court reviewed its appellate jurisdiction de novo.
PRECEDENTIAL VALUE	published
PARTIES	Vanessa Arce, Eudelia Aguilar v. Clarissa Aguilar

TOPICS

- probate procedure
- interlocutory appeal
- appellate jurisdiction
- final judgment rule
- appellate procedure

PRACTICE AREAS

- probate
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

- Whether a probate court's interlocutory discovery order was final and appealable absent an express statute authorizing an appeal.

2. Whether the appeal should be dismissed for want of jurisdiction when the challenged order did not dispose of all parties or issues in a particular phase of the probate proceeding.

HOLDINGS

1. A probate court's interlocutory discovery order is not appealable when no statute declares the order or the relevant phase of the probate proceeding final and appealable, and the order does not dispose of all parties or issues in a particular phase of the proceeding.

KEY QUOTATIONS

“In De Ayala, the supreme court held that if there is no express statute declaring the phase of the probate proceeding to be final and appealable, a probate court order is final and appealable only if it disposes of all parties or issues in a particular phase of the proceedings.” (193 S.W.3d at 579)

FACTUAL BACKGROUND

The appeal arose from a probate proceeding involving the Estate of Carlos Aguilar. The order challenged on appeal concerned discovery issues and did not appear to dispose of all parties or issues in a discrete phase of the probate proceeding. Appellants failed to file the ordered response addressing the appealability of the order.

PROCEDURAL HISTORY

The County Court at Law No. 2 of Webb County entered an order dated February 13, 2015, concerning discovery issues in the probate proceeding. Appellants filed a notice of appeal, but did not respond to the appellate court's order to show cause why the appeal should not be dismissed. The court granted the motion to dismiss and dismissed the appeal for want of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- De Ayala v. Mackie, 193 S.W.3d 575 (Tex. 2006)
- Lehmann v. Har-Con Corp., 39 S.W.3d 191 (Tex. 2001)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas MEMORANDUM OPINION No. 04-15-00222-CV IN THE ESTATE OF Carlos AGUILAR, Deceased From the County Court at Law No. 2, Webb County, Texas Trial Court No. 2012-PB4-000048-L2 Honorable Jesus Garza, Judge Presiding PER CURIAM Sitting: Marialyn Barnard, Justice Rebeca C. Martinez, Justice Patricia O. Alvarez, Justice Delivered and Filed: June 3, 2015 MOTION TO DISMISS GRANTED; DISMISSED FOR

WANT OF JURISDICTION Appellants Vanessa Arce and Eudelia Aguilar filed a notice of appeal from a probate court order dated February 13, 2015.

In response, appellee Clarissa Aguilar filed a motion to dismiss the appeal for want of jurisdiction, arguing the order from which appellants are attempting to appeal is not a final, appealable order, but is merely a discovery order that is not appealable.

We grant the motion to dismiss and dismiss the appeal for want of jurisdiction. Generally, appeals may be taken only from final judgments. *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (citing *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)). A judgment or order is final for purposes of appeal if it actually disposes of all pending parties and claims before the court.

Lehmann, 39 S.W.3d at 195. In the probate context, however, there may be multiple judgments on discrete issues that are final for purposes on appeal. *De Ayala*, 04-15-00222-CV 193 S.W.3d at 578. However, not every interlocutory order in a probate case is appealable. *Id.* In *De Ayala*, the supreme court held that if there is no express statute declaring the phase of the probate proceeding to be final and appealable, a probate court order is final and appealable only if it disposes of all parties or issues in a particular phase of the proceedings.

Id. at 579. Here, the order appellants seek to appeal concerns discovery issues. Because we found no statute declaring such an order appealable under the Probate Code, it did not appear that the order disposed of all parties or issues in a particular phase of the proceedings, and we discovered no other statutory authority permitting an appeal from an interlocutory discovery order, we ordered appellants to file in this court, on or before May 18, 2015, a written response showing cause why this appeal should not be dismissed for want of jurisdiction.

See *id.*; see also TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 (West Supp. 2014). We advised appellants that if they failed to satisfactorily respond within the time provided, the appeal would be dismissed. See TEX. R. APP. P. 42.3(a), (c). Appellants did not file a response.

Accordingly, we grant appellee's motion to dismiss and dismiss the appeal for want of jurisdiction. We order costs assessed against appellants. PER CURIAM -2-