



Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-19-00741-CV

IN RE Leticia R. BENAVIDES
Original Mandamus Proceeding¹

&

No. 04-19-00831-CV

IN THE MATTER OF THE GUARDIANSHIP OF CARLOS BENAVIDES, JR.

From the County Court at Law No. 1, Webb County, Texas
Trial Court No. 2011PB6000081L2
Honorable Hugo Martinez, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: May 20, 2020

PROCEEDINGS CONSOLIDATED, OPINION AND ORDER WITHDRAWN, MOTION FOR REHEARING DENIED AS MOOT, PETITION FOR WRIT OF MANDAMUS DENIED, MOTION TO DISMISS GRANTED, APPEAL DISMISSED FOR WANT OF JURISDICTION

On our motion, we consolidate the above-styled mandamus proceeding and regular appeal, we withdraw our November 20, 2019 opinion and order in the mandamus proceeding, and we issue this opinion and order disposing of the consolidated proceedings. The motion for rehearing relator filed in the mandamus proceeding is denied as moot.

¹ This original proceeding arises out of the above-identified cause number.

In these consolidated proceedings, Leticia R. Benavides challenges an order striking her September 26, 2019 motion to vacate part of a March 6, 2013 final judgment the trial court rendered in a guardianship proceeding. We dismiss Leticia's appeal for want of jurisdiction, and deny her petition for writ of mandamus.

BACKGROUND

A. Proceedings Resulting in the March 6, 2013 Final Judgment

These proceedings arise out of a guardianship dispute regarding Carlos Benavides, Jr. On September 14, 2011, Carlos executed an estate plan. His estate plan included a will, powers of attorney, and other legal instruments. One of the other legal instruments was a declaration that Leticia, Carlos's wife, would be appointed as his guardian in the event of his incapacitation.

Carlos's children filed an application for the appointment of a guardian for Carlos's person and his estate. They alleged Carlos had become incapacitated. They also alleged the instruments in Carlos's estate plan were invalid because he lacked capacity when they were executed. The case was set for a trial.

Before trial, Carlos's relatives filed a motion in limine to exclude Leticia from participating at trial. The motion alleged Leticia lacked statutory standing to participate at the guardianship trial because she had an interest adverse to Carlos. Specifically, Leticia had challenged the validity of marital and property agreements she had with Carlos. The trial court granted the motion in limine in February 2013.

After a trial, on March 6, 2013, the trial court signed a final judgment, declaring Carlos incapacitated and appointing guardians of his person and his estate. The final judgment also declared all of the legal instruments in Carlos's estate plan, including his will, were invalid because he lacked capacity. Leticia appealed the final judgment to this court.

B. The 2014 Appeal

On appeal, Leticia raised sixteen issues. We held the trial court properly sustained the motion in limine excluding Leticia from the trial based on her interest adverse to Carlos. *In re Guardianship of Benavides*, No. 04-13-00197-CV, 2014 WL 667525, at *1 (Tex. App.—San Antonio Feb. 19, 2014, pet. denied) (mem. op.). Although we briefly addressed a few evidentiary issues, we dismissed the remainder of the appeal. *Id.* at *2. We reasoned that because “Leticia lack[ed] standing to contest the guardianship proceeding and the appointment of a guardian, Leticia similarly has no standing to challenge the [trial] court’s orders arising from the guardianship proceeding in this appeal.” *Id.* Leticia’s eleventh issue, which we dismissed, challenged the “orders voiding wills and other documents” without permitting her to participate.

Leticia filed motions for panel rehearing and en banc reconsideration, which this court denied. She then filed a petition for review, which the Supreme Court of Texas denied. She filed a motion for rehearing of the denial of her petition for review, which was also denied. In these filings, Leticia did not challenge this court’s disposition of her eleventh issue challenging the part of the March 6, 2013 final judgment declaring the will void.

C. The Motion to Vacate Proceedings, and Subsequent Proceedings in this Court

On September 26, 2019, nearly six years and six months after the March 6, 2013 final judgment, Leticia filed a motion to vacate the final judgment. Leticia argued the trial court violated her due process rights by setting aside all of the legal instruments in Carlos’s estate plan, not only the guardianship declaration, without allowing her to participate. Leticia argued she had an interest in those other documents. The trial court relied on this court’s 2014 decision to conclude Leticia had no standing to challenge the parts of the March 6, 2013 final judgment declaring the estate plan instruments void.

Leticia filed a petition for writ of mandamus in this court. This court denied Leticia's petition for writ of mandamus in a per curiam memorandum opinion. The same day this court denied Leticia's petition, Leticia filed a notice of appeal challenging the order striking her motion to vacate. Leticia then filed a motion for rehearing in the mandamus proceeding. Carlos's daughter and the guardian of his person, Christina Alexander, filed a motion to dismiss Leticia's appeal for want of jurisdiction.

LETICIA'S STANDING

Alexander argues that under this court's decision in the 2014 appeal, both the mandamus and appellate proceedings must be dismissed because Leticia lacks standing to challenge the March 6, 2013 final judgment. Alexander argues our decision is the law of the case. "The 'law of the case' doctrine provides that a decision of a court of last resort on a question of law will govern a case throughout its subsequent stages." *Cody Tex., L.P. v. BPL Expl., Ltd.*, No. 04-17-00810-CV, 2019 WL 6719034, at *5 (Tex. App.—San Antonio Dec. 11, 2019, no pet. h.) (en banc). The doctrine does not apply when the issues presented in a successive appeal are not substantially the same as those previously decided. *Id.*

One of the issues Leticia has raised is that the trial court lacked subject matter jurisdiction to declare Carlos's will void in the March 6, 2013 final judgment because Carlos was still alive. *See Cowan v. Cowan*, 254 S.W.2d 862, 865 (Tex. Civ. App.—Amarillo 1952, no writ) (holding courts have no jurisdiction to determine the validity of a living person's will). It does not appear Leticia raised this issue in the 2014 appeal. Because the issues in these proceedings are not substantially the same as those previously decided, the law of the case doctrine does not apply. We cannot say Leticia lacked standing to file her petition for writ of mandamus and notice of appeal.

MANDAMUS

In her petition for writ of mandamus, Leticia argues the trial court abused its discretion by striking her motion to vacate. “Mandamus is an extraordinary remedy that will issue only to correct a clear abuse of discretion when there is no other adequate remedy at law.” *In re Mansour*, No. 04-19-00899-CV, 2020 WL 1159050, at *1 (Tex. App.—San Antonio Mar. 11, 2020, orig. proceeding). A trial court clearly abuses its discretion when it vacates a judgment after its plenary power expires. *In re Daredia*, 317 S.W.3d 247, 250 (Tex. 2010) (orig. proceeding) (per curiam). Conversely, a trial court does not abuse its discretion by refusing to vacate a judgment after its plenary power expires. *Cf. id.*

Even when a judgment is void, the trial court does not retain plenary power to vacate the judgment at any time. *See Middleton v. Murff*, 689 S.W.2d 212, 213 (Tex. 1985) (per curiam). Whether a trial court may declare a final judgment void turns on whether the final judgment is being challenged in a direct attack or a collateral attack. *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271 (Tex. 2012). In a trial court, direct attacks consist of equitable bills of review and post-judgment motions. *See id.* A trial court has no authority to declare a judgment void in a direct attack if the post-judgment motion or bill of review is not timely filed. *See Middleton*, 689 S.W.2d at 213. However, “[a] party may collaterally attack a void judgment at any time, even after the time within which to file a direct attack has expired.” *In re Thompson*, 569 S.W.3d 169, 175 (Tex. App.—Houston [1st Dist.] 2018, orig. proceeding) (citing *PNS Store*, 379 S.W.3d at 272).

Leticia argues her motion to vacate is a collateral attack, not a direct attack, on the March 6, 2013 final judgment. We disagree. Motions to vacate are generally considered direct attacks that must be filed within thirty days of a final judgment, even when the judgment is void. *See, e.g., Middleton*, 689 S.W.2d at 213; *Thompson*, 569 S.W.3d at 175; *In re Emerson*, No. 06-19-00067-CV, 2019 WL 3756231, at *3 (Tex. App.—Texarkana Aug. 9, 2019, orig. proceeding) (mem. op.).

Here, Leticia’s motion to vacate was filed in the guardianship proceeding and challenged the adjudication of rights and issues raised in that proceeding. Leticia’s motion to vacate was not filed as a challenge to the enforcement of the March 6, 2013 final judgment in a separate proceeding to adjudicate new rights and issues.²

Leticia’s September 26, 2019 motion to vacate was an untimely direct attack on the March 6, 2013 final judgment. The trial court therefore lacked authority to grant the relief she was requesting. Because a trial court does not abuse its discretion by refusing to vacate a judgment after its plenary power expires, *cf. Daredia*, 317 S.W.3d at 250, Leticia cannot show the trial court clearly abused its discretion. We therefore deny her petition for writ of mandamus.

APPELLATE JURISDICTION

In her motion to dismiss, Alexander argues we lack appellate jurisdiction because Leticia’s notice of appeal is untimely. We lack jurisdiction over an appeal if a notice of appeal is not timely filed. *City of Pearsall v. Tobias*, 533 S.W.3d 516, 521 (Tex. App.—San Antonio 2017, pet. denied). When a party challenges a final judgment on appeal, “a judgment’s finality determines whether an appellant invoked a court’s appellate jurisdiction by timely filing a notice of appeal.” *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co.*, 540 S.W.3d 577, 581–82 (Tex. 2018) (per curiam). A notice of appeal must be filed within 30 days of a final judgment unless a timely post-judgment motion is filed. TEX. R. APP. P. 26.1(a).

Although the filing of a timely post-judgment motion may extend the deadline to file a notice of appeal, an order on a motion challenging a final judgment is generally not appealable

² Alexander notes in her response to Leticia’s motion for rehearing that, “[w]hen and if a will contest is filed, that court will determine whether Leticia has standing in the will contest and what effect, if any, orders in the guardianship proceeding have on the will contest.” *See Cowan v. Cowan*, 254 S.W.2d 862, 865 (Tex. Civ. App.—Amarillo 1952, no writ) (holding courts do not have the power to determine the validity of a will of a living person); *see also Estate of Rhoades*, 502 S.W.3d 406, 415 (Tex. App.—Fort Worth 2016, pet. denied) (holding court has jurisdiction to determine validity of will before probate because testatrix was deceased); TEX. ESTATES CODE § 256.002 (“The probate of a will of a living person is void.”).

separate from the underlying judgment. *Morris v. Wells Fargo Bank, N.A.*, No. 01-19-00610-CV, 2019 WL 4677365, at *1 (Tex. App.—Houston [1st Dist.] Sept. 26, 2019, no pet.) (mem. op.) (per curiam). Consequently, when a timely post-judgment motion is filed, the deadline to file a notice of appeal is determined by the date of the final judgment, not the date the motion is denied. *See* TEX. R. APP. P. 26.1(a) (providing that when a timely post-judgment motion is filed, a notice of appeal may be filed within 90 days “after the judgment is signed”).

As we held above, Leticia’s motion to vacate is not a new discrete phase of the proceedings; the motion related to the validity of a final judgment rendered in a prior guardianship proceeding. The motion to vacate was a direct attack on a final judgment concluding a prior phase of the proceedings. The trial court’s order striking the motion to vacate is therefore not a separate final judgment concluding of a discrete phase of the litigation. Consequently, the order striking her motion to vacate is not appealable separate from the March 6, 2013 final judgment. *See Morris*, 2019 WL 4677365, at *1.

We hold Leticia’s filing of a motion to vacate, and the trial court’s order on the motion, did not restart a new deadline for Leticia to file a second appeal. *See* TEX. R. APP. P. 26.1(a). Leticia’s notice of appeal is therefore untimely, and we lack appellate jurisdiction over her appeal. We therefore grant Alexander’s motion, and dismiss this appeal for want of jurisdiction.

CONCLUSION

We grant appellees’ motion to dismiss this appeal for want of jurisdiction. Because Leticia did not establish the requirements for mandamus relief, her petition for writ of mandamus is denied.

Luz Elena D. Chapa, Justice