



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-19-00600-CV

In the Estate of Ramona **MORENO**, Deceased

From the County Court at Law No. 2, Webb County, Texas  
Trial Court No. 2017PB7000034L2  
Honorable Victor Villarreal, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: June 17, 2020

**DISMISSED FOR LACK OF JURISDICTION**

In this probate matter, will contestants attempt to appeal an order granting a no-evidence summary judgment on their claims. Because the challenged order is interlocutory and not immediately appealable, we dismiss this appeal for lack of appellate jurisdiction.

**BACKGROUND**

On May 3, 2017, Jose R. Perez filed an application to probate Ramona Moreno's last will and testament and a codicil. On May 25, 2017, Josefina Gutierrez, Teresa Rodriguez, and Evangelina M. Galvan, (collectively, "the will contestants,") filed a pleading contesting the validity of the codicil. The will contestants alleged that when Moreno executed the codicil she lacked testamentary capacity or she was under undue influence.

On November 5, 2018, Elsa P. Saenz, filed a first amended application to probate Moreno's will and the codicil. In the first amended application, Saenz stated that the original will proponent,

Perez, had died. Saenz, who was named the successor independent executor in the codicil, asked the trial court to admit Moreno's will and the codicil to probate and to issue letters testamentary. Thereafter, Saenz filed a motion for no-evidence summary judgment on the will contestants' claims. The will contestants filed a response to the no-evidence summary judgment motion and attached evidence to their response.

The trial court signed an order granting the no-evidence summary judgment motion. The will contestants filed this appeal.

### DISCUSSION

Under the general rule, 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)). "Probate proceedings are an exception to the one final judgment rule; in such cases, multiple judgments final for purposes of appeal can be rendered on certain discrete issues." *Id.* (internal quotations omitted). But "[n]ot every interlocutory order in a probate case is appealable." *Id.* The test for appellate courts to determine their jurisdiction over "an ostensibly interlocutory probate order" is as follows:

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.

*Id.* (quoting *Crowson v. Wakeham*, 897 S.W.2d 779, 783 (Tex. 1995)).

In the present case, no express statute declares the challenged order—an order granting a no-evidence summary judgment on will contest claims—to be final and appealable. However, the will contest claims may logically be considered a part of the proceeding to admit Moreno's will and the codicil to probate and to issue letters testamentary. See *In re Estate of Coleman*, 360 S.W.3d 606, 609-10 (Tex. App.—El Paso 2011, no pet.) (concluding a summary judgment order

disposing of a will opponent's claims was not an appealable order when it did not resolve the will proponent's requests to admit the will to probate and to authorize letters testamentary). The trial court has not disposed of Saenz's request to admit Moreno's will and the codicil to probate, which necessarily involves the issue of Moreno's testamentary capacity. *See In re Estate of Hemsley*, 460 S.W.3d 629, 634 (Tex. App.—El Paso 2014, pet. denied) (recognizing that when a contest is filed before a will is admitted to probate, the will proponent bears the burden of establishing that the will was properly executed and that the testator had testamentary capacity). In addition, the trial court has not disposed of Saenz's request to issue letters testamentary. Because there is a pending proceeding of which the will contest claims may logically be considered a part, and pleadings also a part of that proceeding raise issues or parties not disposed of, the no-evidence summary judgment order is interlocutory and not immediately appealable. *See De Ayala*, 193 S.W.3d at 579 (noting that “under *Crowson*, the trial court's order was interlocutory because it did not dispose of all parties or issues in a particular phase of the proceedings.”); *Riddick v. Marmolejo*, No. 04-13-00157-CV, 2014 WL 953464, at \*2-3 (Tex. App.—San Antonio Mar. 12, 2014, no pet.) (applying the *Crowson* test and concluding a dismissal order was interlocutory and not immediately appealable when the order could logically be considered a part of a proceeding in which issues were still pending).

We issued an order directing the will contestants to show cause in writing why this appeal should not be dismissed for lack of jurisdiction. The will contestants filed a response, but it does not demonstrate our jurisdiction over this appeal.

#### CONCLUSION

Because the challenged order is interlocutory and not immediately appealable, we lack jurisdiction over this appeal. We, therefore, dismiss this appeal for lack of jurisdiction.

Irene Rios, Justice