

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00038-CV

**John Barnes Gordon, Independent Executor of
the Estate of Patrick Malcom Gordon, Deceased, Appellant**

v.

Beverly Diane Gordon, Appellee

**FROM THE COUNTY COURT AT LAW OF BASTROP COUNTY
NO. 10,256, THE HONORABLE BENTON ESKEW, JUDGE PRESIDING**

MEMORANDUM OPINION

John Gordon filed a will for probate after his brother Patrick Gordon died. The will appointed John as independent executor of the estate. Before the will was signed, Patrick and his wife Beverly Gordon executed a trust specifying the ways in which their assets were to be distributed when one or both of them died. After the will was admitted to probate, John filed a declaratory-judgment action asking the trial court to declare how the terms of the will affected the terms of the trust and arguing that the will changed the beneficiary designations of certain financial accounts and other property. In response, Beverly filed a partial motion for summary judgment asserting that the will did not revoke any beneficiary designations and requesting that John be removed as independent executor.

John filed a notice of appeal stating that he was appealing a judgment signed by the trial court on October 15, 2019. However, the clerk's record for this case does not include a

judgment or order issued by the trial court on that date or any other date, and a telephone inquiry to the trial court's clerk's office indicated that no final judgment had been issued in this case. For that reason, this Court sent a ten-day letter to the parties asking the parties to explain what ruling is being appealed and whether we have jurisdiction over that ruling.

In his response, John included a copy of a letter sent by the trial court to the parties on October 15, 2019, stating that the trial court granted Beverly's motion for partial summary judgment and granted her request to have John removed as independent executor. The letter also specified that the parties should consult with one another to schedule a hearing to address changes to a proposed order and to discuss the appointment of a dependent executor. John further stated that a hearing had been scheduled for March 23, 2020, on the issue of entering a scheduling order and entering a judgment consistent with the letter from October 15, 2019. John also acknowledged that the letter did not dispose of all of the parties involved in the probate of the estate but asserted that probate actions can have more than one final judgment. *See De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006). Accordingly, John requested that this Court view the letter as an appealable order as to the issue of whether he should be removed as an executor or, alternatively, abate the case and then reinstate it after the trial court issues a final order removing him as an independent executor.

In a more recent response, John informed this Court that a hearing was held on March 23, 2020, and that the trial court issued an order clarifying that its October 15, 2019 letter was not "intended to constitute an order of the court from which an appeal could be taken" and that "[n]o formal written order on the matters discussed in the letter has been issued by this court." Because the trial court explicitly said that it had not signed an order determining the

matter, we must conclude that no appealable order has been issued. Further, the trial court has not indicated when or whether it intends to sign such an order.

Accordingly, we dismiss this appeal for want of jurisdiction. *See Tex. R. App. P. 42.3; see also City of Houston v. Kilburn*, 849 S.W.2d 810, 811 (Tex. 1993) (explaining that “an appeal may be taken only from a final judgment” or appealable order); *Ganesan v. Reeves*, 236 S.W.3d 816, 817 (Tex. App.—Waco 2007, pet. denied) (noting that Rules of Appellate Procedure do “not contemplate an appellate place holder until there is a final appealable judgment” and do “not require [appellate courts] to docket and hold an appeal open until there is an appealable judgment or order at some future date”); *Estate of McGinnis v. Sessions*, No. 12-01-00297-CV, 2002 WL 452387, at *1 (Tex. App.—Tyler Mar. 20, 2002, no pet.) (mem. op.) (dismissing appeal for want of jurisdiction where appellant “failed, after notice, to provide th[e] court with a final judgment or appealable order”).

Thomas J. Baker, Justice

Before Chief Justice Rose, Justices Baker and Triana

Dismissed for Want of Jurisdiction

Filed: June 3, 2020