

There is a marital property legislative gap that needs some sealant

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Pipes can spring leaks even if they overlap. If a coupler joint fails, a bit of sealant can fix the leak. So too with legislative gaps, especially when they impact jurisdiction and standing, and sublime distinctions between the Texas Family Code and the Texas Estates Code. These issues were presented in Moody v. Moody. The case also involves a disagreement between certain members of the decedent's first and second families, notwithstanding the fact that William Lewis Moody, IV had been married to his second wife for 50 years.

The 14th Court of Appeals dealt with appeals involving a large estate and whether Mr. Moody had the capacity to enter into a marital property agreement (“MPA”). Mr. Moody married twice and had children from both marriages.

William Lewis Moody, IV (“William”) died on July 14, 2014, at age 89. He left a will dated April 16, 2014, which appointed Moody National Bank as the independent executor of his estate and as trustee to his living trust (“MNB” or “Trustee”) . . . William executed three documents on April 16, 2014: a will, a living trust, and a marital property agreement. Linda challenges only William’s capacity to execute the MPA.

Linda was one of William’s daughters from his first marriage. Prior to Linda’s petition, filed two years after William’s last will and testament was entered into probate, no one had challenged the validity of the marital property agreement, nor of William’s capacity to execute the agreement. What was the basis of the litigation for Linda?

She sought a temporary injunction and declaration that the MPA, which William signed on April 16, 2014, is void and unenforceable, and that William lacked the requisite capacity to execute the MPA. Prior to this suit, no one had challenged William’s capacity to enter into any agreement. By challenging the MPA, Linda would leave the trust and will in place, and argue that the bulk of the marital estate (i.e., a Ranch valued in 2014 at approximately \$45 million) should flow through the trust to herself and her two sisters.

William was survived by his widow, Darlene. What did William set out in his estate plan?

The will leaves William's estate almost entirely to the trust; any community property interest in a retirement plan is left to Darlene, and the rest of William's estate to the trust. Under the trust, during William's lifetime, income and principal is distributed to William at his direction. Upon William's death, the Trustee must pay all debts and expenses of his estate, and then distribute Darlene's property to her. William's personal effects are to be divided according to specific bequest or else equally between Darlene and William's children. Property remaining in the trust after William's death, including any property transferred to the trust through the estate, is divided into a Marital Trust (which is further divided into exempt and nonexempt parts) and a Bypass Trust. Under these trusts, MNB pays net income at least *712 quarterly to Darlene, and the trusts terminate upon Darlene's death. It is not until Darlene's death that Linda receives any distribution other than personal effects.

Three and a half years after William's will was admitted to probate, Linda amended her petition, adding claims for fraud and breach of fiduciary duty against Darlene. The jury verdict found that:

1. William did not have the mental capacity to sign the MPA;
2. His widow, Darlene, had breached her fiduciary duty in regard to the MPA;
3. Darlene committed fraud as to William's separate property; and
4. The MPA was not enforceable.

What does the case turn on for the 14th Court of Appeals? Jurisdiction, standing and the failure of a Texas Family Code provision to define the word "heir." MNB asserts that Linda lacked standing to make the claims she asserted in probate court. Justice Poissant provides an excellent summary of issues related to standing, including:

“[S]tanding, as a component of subject matter jurisdiction, cannot be waived and may be raised for the first time on appeal by the parties or by the court.” Tex. Ass’n of Bus. v. Tex. Air Control Bd. , 852 S.W.2d 440, 445–46 (Tex. 1993). “Standing” is a party’s justiciable interest in the suit. Nootsie, Ltd. v. Williamson Cty. Appraisal Dist. , 925 S.W.2d 659, 661–62 (Tex. 1996). In Texas, the standing doctrine requires that there be (1) “a real controversy between the parties” that (2) “will be actually determined by the judicial declaration sought.” Austin Nursing Ctr., Inc. v. Lovato , 171 S.W.3d 845, 849 (Tex. 2005). “In other words, the plaintiff’s alleged injury must be ‘concrete, particularized, fairly traceable to the defendant’s allegedly unlawful conduct, and likely to be redressed by the requested relief.’ ” Gutierrez v. Stewart Title Co. , 550 S.W.3d 304, 313 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (quoting AVCO Corp. v. Interstate Sw., Ltd. , 251 S.W.3d 632, 649 (Tex. App.—Houston [14th Dist.] 2007, pet. denied)). Standing focuses on who may bring an action and is determined at the time suit is filed in the trial court. M.D. Anderson Cancer Ctr. v. Novak , 52 S.W.3d 704, 708 (Tex. 2001) ; Tex. Ass’n of Bus. , 852 S.W.2d at 446 n. 9.

Standing is the prerequisite for any litigation. MNB and Darlene asserted on appeal that Linda lacked standing to bring her suit. What did the 14th District Court find when it reviewed the Texas Family Code? A gap. In fact, Justice Poissant noted that the question of “whether Section 4.205 of the Family Code confers standing upon an heir to contest the validity or enforceability of a marital property agreement is a matter of first impression.” There is a gap in Section 4.205 of the Texas Family Code, in that the term “heir” is left undefined:

Section 4.205(c): If a proceeding regarding enforcement of an agreement under this subchapter occurs after the death of the spouse against whom enforcement is sought, the proof required by Subsection (a) may be made by an heir of the spouse or the personal representative of the estate of that spouse. Tex. Fam. Code § 4.205(c) (emphasis added).

Texas Family Code Section 4.205 addresses enforcement of agreements to convert property to community property. The provision mandates that such an agreement must be executed voluntarily, and further, that the individual executing the agreement must receive notice, or “fair and reasonable disclosure” of the impact of the agreement and the agreement’s effect on converting property to community property. Linda asserted that, as no one contested her standing at the trial court level, such claims could not be asserted at the appellate court level. The Court disagreed:

Standing, as a component of subject matter jurisdiction, is a constitutional prerequisite to the filing of suit, the absence of which may be raised for the first time on appeal or sua sponte by this Court. See, e.g., Heckman, 369 S.W.3d at 150; Tex. Ass’n of Bus. , 852 S.W.2d at 445–46; Phillips v. Dow Chem. Co. , 186 S.W.3d 121, 129 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (“ [B]ecause lack of standing defeats subject-matter jurisdiction and cannot be waived, a challenge to standing may properly be raised at any time and may even be raised for the first time on appeal.”).

Linda was not a devisee under William’s will. If Texas Estates Code Section 22.015 is read in conjunction with Texas Family Code Section 4.205(c), there is no “heir” in the Moody case per the Estates Code

definition, as William did not die intestate. William died leaving a will. No one contested William's will. Linda did not stand to inherit as a devisee under William's will. Instead, Linda benefited from the trust established by her father. The estate was left to a trust, not to Linda, nor to her siblings. The 14th District Court held that Linda's reliance on the enforcement provision in Texas Family Section 4.205 is flawed, as that provision "does not provide that heirs have standing to challenge conversion agreements." The 14th District Court concluded that Texas Family Code Section 4.205 "disjunctive formulation" lists two categories of litigants who may have the right to assert claims – but that the statute fails to create the possibility for competing claims.

The Court also held that Linda has no standing under the Texas Estates Code. The Court rejected that argument, holding that:

As set forth above, there is no 'heir' in this case within the meaning of the Estates Code because William died leaving a will; his will is uncontested; Linda is not a devisee under the will; and Linda has no property right in William's estate because his will bequeathed all of his estate to the trust. Bootstrapping together several statutory definitions, without more, does not give her standing to bring claims either independently, or on behalf of the estate or trust, to challenge the MPA.

The Court goes on to note that Texas Estates Code Section 351.054(a) establishes that only the "personal representative of the estate of a decedent is entitled to sue for the recovery of property belonging to the estate." It adds that Linda fails to fall into exceptions to that general rule because:

1. Linda is not an heir at law lodging a survival suit and there was a pending administration when she filed her case; and
2. Linda failed to give notice to MNB before filing suit, and failed to establish, as a condition precedent to filing her suit, that MNB's interests were antagonistic to those of the estate.

Linda did not assert claims against MNB. Nor did she establish that "MNB could not or would not bring suit." This lapse in following administrative prerequisites proves to be another reason for the 14th Court of Appeals to reverse and render.

If the foregoing reasons were insufficient, the 14th Court of Appeals also holds that Linda lacks standing to challenge the MPA as an effective partition agreement, and further, that Linda is not in the position to assert survival claims.

As the Court holds that Linda lacks standing, it does not address additional issues raised by Darlene and MNB. Why not? Sealant. If the pipe is fixed, there is no need to call the plumber. Moody v. Moody raises a number of interesting issues, but most importantly, it reminds us that standing is the foundation of a justiciable claim. The case also reminds us that the Texas Family Code may have some gaps that could use a bit of filling.

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