



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

**MEMORANDUM OPINION**

No. 04-19-00801-CV

In the Matter of the **GUARDIANSHIP OF** Carlos **BENAVIDES, Jr.**,  
an Incapacitated Person

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

Opinion by: Beth Watkins, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Luz Elena D. Chapa, Justice  
Beth Watkins, Justice

Delivered and Filed: December 16, 2020

**MOTION TO DISMISS DENIED; REVERSED AND REMANDED**

This appeal arises out of a guardianship proceeding involving Carlos Benavides, Jr. His wife, appellant Leticia R. Benavides, challenges two orders striking her petition for removal of the guardian and her objection to a petition for instruction the guardian filed. Carlos's daughter from a previous marriage, appellee Linda Cristina B. Alexander, as guardian of the person and estate of Carlos Benavides, Jr., filed a motion to dismiss arguing we lack jurisdiction over this appeal. We deny Linda's motion to dismiss, reverse the trial court's orders, and remand the cause to the trial court for further proceedings consistent with this opinion.

**BACKGROUND**

This matter has come before our court on multiple occasions. *See In re Benavides*, 605 S.W.3d 234 (Tex. App.—San Antonio 2020, pet. denied); *Benavides v. Benavides*, No. 04-14-

00523-CV, 2014 WL 5020283 (Tex. App.—San Antonio Oct. 8, 2014, pet. denied) (mem. op.); *In re Guardianship of Benavides*, No. 04-13-00197-CV, 2014 WL 667525 (Tex. App.—San Antonio Feb. 19, 2014, pet. denied) (mem. op.); *Benavides v. Mathis*, 433 S.W.3d 59 (Tex. App.—San Antonio 2014, pet. denied); *In re Guardianship of Benavides*, 403 S.W.3d 370 (Tex. App.—San Antonio 2013, pet. denied). We repeat some of the facts from those opinions and provide additional background related to this appeal.

On September 2, 2011, Carlos’s adult children filed applications for temporary and permanent guardianship over Carlos’s person and estate. On September 14, 2011, Carlos executed an estate plan designating Leticia guardian of his person and estate. Leticia then sought to dismiss and contest the applications. The trial court denied Leticia’s motion to dismiss and appointed a temporary guardian of Carlos’s person and estate. Carlos’s adult children then filed a motion in limine seeking to exclude Leticia from participating in the guardianship proceeding, claiming her interest was adverse to Carlos’s. The trial court agreed, found that Leticia lacked standing to intervene because her interest was adverse to Carlos’s, and granted the guardian’s motion to exclude her from the proceedings (the “2013 Limine Order”). The trial court later signed a final judgment declaring Carlos incapacitated, appointing guardians of his person and estate, and declaring his 2011 estate plan invalid.<sup>1</sup> We affirmed those orders and the parties have since engaged in protracted litigation.

This dispute arose in July of 2019 when Linda filed a petition for instruction, asking the trial court to make certain declarations regarding distributions from the Benavides Family Mineral Trust.<sup>2</sup> Leticia filed an objection to Linda’s petition for instruction and a motion to remove Linda

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<sup>1</sup> The trial court ultimately appointed Linda permanent guardian of Carlos’s person and estate.

<sup>2</sup> We held distributions from the Benavides Family Mineral Trust are separate property to which Leticia has no claim. *Mathis*, 433 S.W.3d at 67.

as guardian, arguing Linda was disqualified from serving as Carlos's guardian because, inter alia, *she* had a conflict of interest. In response, Linda filed two motions in limine challenging Leticia's standing to participate in the guardianship proceeding under the 2013 Limine Order and because Leticia's interest was still adverse to Carlos's.

The trial court concluded that the 2013 Limine Order remained "in full force and effect as a final, non-appealable order" and that Leticia's interest was still adverse to Carlos's interest. It therefore found that Leticia lacked standing to file her motion to remove Linda as guardian or her objection to Linda's petition for instruction and dismissed her filings with prejudice. Leticia appeals those orders.

#### ANALYSIS

##### *Linda's Motion to Dismiss*

We begin our analysis with the motion to dismiss Linda filed in this court. Linda argues we lack jurisdiction over Leticia's appeal because: (1) Leticia does not have standing to challenge the trial court's orders under the law of the case doctrine; and (2) Leticia's appeal is an untimely attack on the 2013 Limine Order.

##### *Law of the Case*

According to Linda, our 2014 decision affirming the 2013 Limine Order is the law of the case. Leticia argues the law of the case doctrine does not apply because our 2014 decision affirming the trial court's 2013 Limine Order was clearly erroneous. "[W]hether a party has standing to participate in a guardianship proceeding is a question of law." *In re Guardianship of Miller*, 299 S.W.3d 179, 188 (Tex. App.—Dallas 2009, no pet.).

Linda asserted this law of the case argument in her most recent appeal, and we find that analysis well-reasoned and instructive. "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." *In*

*re Benavides*, 605 S.W.3d at 238 (quoting *Cody Tex., L.P. v. BPL Expl., Ltd.*, No. 04-17-00810-CV, — S.W.3d —, 2019 WL 6719034, at \*5 (Tex. App.—San Antonio Dec. 11, 2019, pet. denied) (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.*

In its 2013 Limine Order, the trial court found that Leticia’s interest was adverse to Carlos’s, so it prohibited Leticia from contesting the creation of his guardianship or the appointment of his guardian. Relying on Texas Estates Code section 1005.001(b), we concluded that since Leticia lacked standing to contest the creation of the guardianship or the appointment of the guardian, she also lacked standing to challenge those orders on appeal. *In re Guardianship of Benavides*, 2014 WL 667525, at \*2.

In this appeal, Leticia does not contest the creation of a guardianship or the appointment of a guardian. Instead, she argues that after the guardianship was created and a guardian was appointed, she properly objected to Linda’s request for trial court authorization to take an action that would benefit Linda to Carlos’s detriment, and properly sought to remove Linda as Carlos’s guardian. Because the issues presented in this appeal are not substantially the same as those in our 2014 decision, we cannot say Leticia lacks standing to challenge the August 28, 2019 orders based on law of the case. *See In re Benavides*, 605 S.W.3d at 238.

#### *Untimely Notice of Appeal*

Linda also argues we lack appellate jurisdiction because Leticia’s notice of appeal is untimely. According to Linda, Leticia’s challenge to the August 28, 2019 orders is actually a challenge to the 2013 Limine Order, and the deadline to appeal the 2013 Limine Order has passed. Linda contends that Leticia’s current appeal essentially amounts to a motion for rehearing of our 2014 decision, and the deadline to file rehearing has also passed.

In response, Leticia argues her motion to remove and objection to Linda's petition for instruction initiated new phases in the guardianship proceeding, making the August 28, 2019 orders final and appealable. She alternatively argues that her actions were collateral attacks on the 2013 Limine Order.

“We lack jurisdiction over an appeal if a notice of appeal is not timely filed.” *Id.* at 239 (citing *City of Pearsall v. Tobias*, 533 S.W.3d 516, 521 (Tex. App.—San Antonio 2017, pet. denied)). If, as here, a timely post-judgment motion is filed, then the notice of appeal is due within 90 days of a final judgment. TEX. R. APP. P. 26.1(a). In a guardianship proceeding such as this, multiple final judgments that dispose of “certain discrete issues” can occur. *See De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006); *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (providing that multiple orders resolving certain discrete matters in probate case may be final for purposes of appeal). In the absence of a statute declaring an order final, a guardianship order is final if it disposes of all the parties and issues in a particular phase of the proceeding of which the order logically may be considered a part. *See De Ayala*, 193 S.W.3d at 578–79.

Again, the 2013 Limine Order specifically found that Leticia lacked standing to take the actions section 1055.001(b) of the Estates Code prohibits a person with a conflict of interest from taking. That order disposed of a discrete issue by disposing of all the parties and issues in that phase of the proceeding. *See id.*; *see also In re Guardianship of Miller*, 299 S.W.3d at 186–87 (holding order granting motion in limine and finding person lacked standing to participate in guardianship proceeding was final, appealable order). New phases of the guardianship proceeding began when Linda filed her petition for instruction asking the trial court to make certain declarations regarding trust distributions and when Leticia filed her motion to remove Linda as guardian. The August 28, 2019 orders disposed of the issues in those discrete phases by finding Leticia lacked standing and dismissing her pleadings. As a result, the August 28, 2019 orders are

final, appealable orders that Leticia timely appealed. *See De Ayala*, 193 S.W.3d at 578; *In re Guardianship of Miller*, 299 S.W.3d at 186–87; *see also* TEX. R. APP. P. 26.1(a).

Linda argues, however, that Leticia’s challenge to the August 28, 2019 orders is really an attack on the 2013 Limine Order since the August 28, 2019 orders found the 2013 Limine Order remained “in full force and effect as a final, non-appealable order.” Linda’s argument, however, is misplaced because it fails to recognize that the 2013 Limine Order and the August 28, 2019 orders disposed of different, discrete phases of the guardianship proceeding which Leticia could properly appeal. Accordingly, we disagree that Leticia’s current appeal is an attempt to appeal the 2013 Limine Order. Because we conclude that Leticia’s notice of appeal is timely, we deny Linda’s motion to dismiss.

### ***Standing***

On appeal, Leticia challenges the August 28, 2019 orders, arguing the trial court improperly relied on the 2013 Limine Order to dismiss her 2019 claims. According to Leticia, she had standing in 2019 because Linda’s petition for instruction and Leticia’s removal action were separate phases of the guardianship proceeding, so the trial court should have determined her standing separate and apart from the 2013 Limine Order. Leticia further argues that section 1055.001 of the Texas Estates Code allows her to challenge Linda’s petition for instruction and file a removal action, and that her interest is no longer adverse to Carlos’s. Finally, Leticia contends she timely perfected her appeal.

In response, Linda reiterates the arguments in her motion to dismiss urging this court to dismiss the appeal for lack of jurisdiction based on the law of the case doctrine and Leticia’s untimely notice of appeal. Linda further argues her petition for instruction and the motion to remove Linda as guardian were not new guardianship proceedings, and as a result, Leticia cannot relitigate standing and appeal each time the trial court dismisses her filings. Finally, Linda

contends Leticia lacks standing because her interest was still adverse to Carlos's interest when the trial court signed the August 28, 2019 orders.

*Standard of Review and Applicable Law*

As indicated above, whether a party has standing to participate in a guardianship proceeding is a question of law we review de novo. *In re Guardianship of Miller*, 299 S.W.3d at 188. When standing is conferred by statute, the statute itself serves “as the proper framework for a standing analysis.” *In the Interest of S.M.D.*, 329 S.W.3d 8, 12 (Tex. App.—San Antonio 2010, pet. dismiss'd). Section 1055.001 of the Texas Estates Code, entitled “Standing to Commence or Contest Proceeding,” provides in relevant part, “[e]xcept as provided by Subsection (b), any person has the right to . . . appear and contest a guardianship proceeding.” TEX. EST. CODE ANN. § 1055.001(a). Subsection (b) explains that a person who has an interest adverse to a proposed ward or incapacitated person may not file an application to create a guardianship, contest the creation of a guardianship, contest the appointment of a guardian, or contest an application for complete restoration or modification of a ward's guardianship. *Id.* § 1055.001(b).

*Application*

Through its August 28, 2019 orders, the trial court found the 2013 Limine Order to be “in full force and effect as a final, non-appealable order.” Based on that finding, it determined Leticia had an interest adverse to Carlos's interest, and concluded she lacked standing to file an objection to Linda's petition for instruction or a motion to remove Linda as guardian. Leticia, however, argues the trial court improperly relied on the 2013 Limine Order because that order disposed of a separate discrete phase of the guardianship proceeding.

While section 1022.002(d) of the Texas Estates Code provides that a guardianship “is one proceeding for purposes of jurisdiction,” the Texas Supreme Court has clarified that a guardianship proceeding can produce multiple judgments that dispose of discrete issues and are final for

purposes of appeal. *See De Ayala*, 193 S.W.3d at 578. And as we explained above, the 2013 Limine Order disposed of a discrete issue in a particular phase of the proceeding—whether Leticia had an adverse interest to Carlos’s interest *for purposes of creating a guardianship or appointing a guardian*. *See id.*; *see also In re Guardianship of Miller*, 299 S.W.3d at 186–87. Contrary to Linda’s assertion, the 2013 Limine Order did not determine Leticia’s standing for every future phase of the guardianship proceeding, but only for the particular phase of the proceeding concerning creation of the guardianship and appointment of the guardian. *See De Ayala*, 193 S.W.3d at 578; *In re Guardianship of Miller*, 299 S.W.3d at 186–87. When new phases of the guardianship proceeding began—i.e., when Linda filed a petition for instruction and Leticia filed her motion to remove Linda as guardian—the trial court was required to determine Leticia’s standing anew, independent of the 2013 Limine Order. *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.3d 440, 446 n.9 (Tex. 1993) (standing is determined at the time suit is filed). Accordingly, the trial court erred when it determined Leticia lacked standing in 2019 under the 2013 Limine Order.

Linda contends, however, that irrespective of the 2013 Limine Order, Leticia lacks standing because her interest was adverse to Carlos’s interest in 2019 when she filed her objection to Linda’s petition for instruction and her motion to remove Linda as guardian. We do not need to determine whether Leticia’s interest was adverse to Carlos’s because section 1055.001(b), which governed the 2013 Limine Order, does not govern this phase of the guardianship proceeding. Under the plain language of that section, a person who has an interest adverse to the proposed ward may not: (1) file an application to create a guardianship; (2) contest the creation of a guardianship; (3) contest the appointment of a person as guardian or (4) contest an application for complete restoration or modification of a ward’s guardianship. TEX. EST. CODE § 1055.001(b). In this phase of the guardianship proceeding, Leticia has not taken any of these actions. *See id.* Accordingly,

under section 1055.001(b), Leticia was not barred from appearing in the guardianship proceeding to file her objection to Linda's petition for instruction or her motion to remove Linda as guardian.

**CONCLUSION**

We deny Linda's motion to dismiss, reverse the trial court's August 28, 2019 orders, and remand this cause to the trial court for further proceedings consistent with this opinion.

Beth Watkins, Justice