



# Interlocutory Appeals as of Right in Probate Estates

By Richard Lee Stavins

**N**o matter how incorrect a Circuit Court order might be, in most instances an appeal is not permitted until the litigation is finally concluded as to all parties, and all rights, claims, and liabilities have been adjudicated. However, the Illinois Supreme Court Rules do allow for interlocutory appeals of a few limited types of orders. One such order often overlooked—that is, where an interlocutory appeal will lie—is any order entered “in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.” Supreme Court Rule 304(b)(1).

Effectively, this means that every order entered in every contested and uncontested probate estate that finally determines a party’s right or status is immediately appealable as of right. The order need not be the final determinative order in the estate; it need only resolve all matters on a particular issue. *Estate of York*, 2015 IL App (1st) 132830, ¶ 22; *Stephen v. Huckaba*, 361 Ill.App.3d 10947, 1051 (4th Dist. 2005). No special language is required to make the order appealable. Further, no

304(a) finding is required that there is no just reason to delay appeal of the order.

## Timing

One crucial requirement for an order to be appealable within the scope of Rule 304(b)(1) is that it must be appealed immediately—by filing a notice of appeal within the usual 30 days—or the right of appellate review of the order is forever lost. *Estate of Jackson*, 354 Ill.App.3d 616, 619 (1st Dist. 2004); *Estate of Thorpe*, 282 Ill.App.3d 612, 616 (4th Dist. 1996); *Estate of Devey*, 239 Ill.App.3d 630, 633 (4th Dist. 1993). Thus, any party aggrieved on a particular issue that is adjudicated during an estate’s administration, before the estate is closed, must not wait until the closing of the estate and then appeal. An order appealed at that later point will be summarily affirmed (*Thorpe*) or the appeal will be summarily dismissed sua sponte for lack of appellate jurisdiction. *R & G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill.App.3d 318, 325 (4th Dist. 2004).

## Appealable Orders

Not every order entered during the course of an estate is appealable under 304(b)(1). *Estate of Vogt*, 249 Ill.App.3d 282, 285 (1st Dist. 1993). Only orders that finally determine a party’s right or status are appealable. The Appellate Court of Illinois has held the following orders to be within the scope of 304(b)(1), and therefore appealable as of right, immediately:

- Appointing or removing an executor: *Estate of Prunty*, 2018 IL App (4th) 170455, ¶20; York.
- Appointing a plenary guardian: *Estate of Ohlman*, 259 Ill.App.3d 120, 124 (1st Dist. 1994).
- Refusing to remove a guardian: *Estate of Neuf*, 85 Ill.App.3d 468, 469 (5th Dist. 1980).
- Allowing a claim: *Estate of Moses*, 13 Ill.App.3d 137, 145 (1st Dist. 1973); *York, Id.*
- Disallowing a claim: *Prunty*; *York*.
- Finding a deed invalid: *Jackson*.
- Construing a will: *Thorpe*.
- Denying leave to intervene: *Estate of Mueller*, 275 Ill.App.3d 128, 139 (1st



Dist. 1995).

- Admitting a will to probate: *Estate of Strong*, 194 Ill.App.3d 219, 225 (1st Dist. 1990); York.
- Refusing to admit a will to probate: *Prunty*; York.
- Removing or not removing an attorney for a party: *Estate of Kime*, 95 Ill.App.3d 262, 268-69 (3d Dist. 1981).
- Denying a petition for fees: *In re Trusts of Strange ex rel Whitney*, 324 Ill.App.3d 37, 41-42 (2d Dist. 2001).
- Finding that a particular item of property is or is not properly a probate asset: *Estate of Pawlinski*, 407 Ill.App.3d 957, 963 (1st Dist. 2011).
- Declaring a codicil valid: *Houghtaylen v. Russell d. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶¶ 13-15.

### Non-appealable Orders

On the other hand, the following orders have been held not to be within the scope of Rule 304(b)(1):

- Rejecting a petition to settle a minor's case: *Estate of Stepp*, 271 Ill.App.3d 817, 818 (3d Dist. 1995)
- Transferring the estate to another county: *Prunty*.
- Finding that a residuary trust beneficiary has standing to contest the executor's accounting: *Vogt*.
- Dismissing some but not all counts of a will contest: *Estate of Nicholson*, 268 Ill. App.3d 689, 693 (1st Dist. 1994).
- Denying a motion to vacate an order declaring heirship: *Estate of Hutchins*, 120 Ill.App.3d 1084, 1086 (4th Dist. 1984).



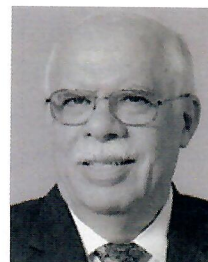
- Denying any motion with the inclusion of the phrase “without prejudice”: *Estate of Cerami*, 2018 IL App (1st) 172073, ¶ 43.

### Practical Considerations

All of this can present a major dilemma for the party who loses on some issue during the administration of a contested estate. If the order does fit within the Rule 304(b)(1) standard and is not immediately appealed, the right of appeal is absolutely forever lost. If the order does not fit within that standard and is appealed, it likely will be dismissed after briefs have been filed and the case assigned to a panel for decision.

Accordingly, an attorney representing any party in a contested probate matter must be aware of what orders do or do not

meet the criteria for interlocutory appeals under Rule 304(b)(1). When such an order is entered, counsel must decide within a relatively short period of time, with the client's documented approval, whether or not to appeal. ■



*Richard Lee Stavins, a shareholder at Robbins DiMonte, Ltd. in Chicago, concentrates on trial and appellate litigation. He is a 50-year CBA member and serves on the Editorial Board of the CBA Record.*