Texas Comm. Bk. v. Correa, [28 S.W.3d 723](https://casetext.com/case/texas-comm-bk-v-correa?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&ssr=false&scrollTo=true) (Tex. App. 2000)

"A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending." *Bailey*, [862 S.W.2d at 585](https://casetext.com/case/bailey-v-cherokee-county-appraisal-dist#p585); *Estate of Hanau*, [806 S.W.2d 900, 904](https://casetext.com/case/estate-of-hanau-in-re#p904) (Tex.App.-Corpus Christi 1991, writ denied).

### B. Closing of the Independent Administration

An independent executor may formally close an independent administration by filing a final account verified by affidavit. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 1999); *Estate of McGarr,* [10 S.W.3d 373, 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376) (Tex.App.-Corpus Christi 1999, no pet.). Section 151 of the probate code provides that:

When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court:

(1) a closing report verified by affidavit that shows:

(i) The property of the estate which came into the hands of the independent executor;

(ii) The debts that have been paid;

(iii) The debts, if any, still owing by the estate;

(iv) The property of the estate, if any, remaining on hand after payment of debts; and

(v) The names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

[Tex. Prob. Code Ann. § 151(a)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) (Vernon Supp. 2000).

The filing of such an affidavit and proof of its delivery terminates the independent administration and the power and authority of the independent executor. *Id*. at [§ 151(b)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed). At that point, persons dealing with properties of the estate or claims against the estate shall deal directly with the distributees of the estate. *Id*. The affidavit closing the independent administration gives the persons described in the will as entitled to receive particular assets the power to enforce their right to payment or transfer by suit. *Id*. at [§ 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373. It does not, however, relieve the executor of liability for any mismanagement of the estate or from liability for any false statements in the affidavit. [Tex. Prob. Code Ann. § 151(c)](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau*, 800 S.W.2d at 373.

An independent administration also can be closed without filing an affidavit. Even in the absence of such an affidavit, an independent administration is considered closed when debts have been paid so far as the assets will permit and all property has been distributed. [Tex. Prob. Code Ann. § 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed); *Hanau,* [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). This court has explained:

An independent administration of an estate is considered closed when the debts have been paid and the property has been distributed and there is no more need for administration. The filing of a verified final account with the probate court pursuant to [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) merely formally closes an independent administration.

*Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903); *see also McGarr,* [10 S.W.3d at 376](https://casetext.com/case/in-re-estate-of-mcgarr#p376).

This Court has noted that we must look beyond the title of the final accounting to its contents to determine if the document is in fact a [Section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed) affidavit. *Hanau*, [806 S.W.2d at 903](https://casetext.com/case/estate-of-hanau-in-re#p903). "If the instrument before the court is filed as the final accounting but is in reality only a presentation of the status of the estate and if it is apparent from the instrument that the estate is not ready to be closed, then, to close the estate would ignore the purpose of the statute." *Id*.; *accord Estate of Canales*, [837 S.W.2d 662, 669](https://casetext.com/case/estate-of-canales-in-re#p669) (Tex.App.-San Antonio 1992, no writ). Still, where, as here, the affidavit generally comports with the requirements of [section 151](https://casetext.com/statute/texas-codes/probate-code/chapter-vi-special-types-of-administration/part-1-temporary-administration-in-the-interest-of-estates-of-dependents/section-151-repealed), the Estate appears to need no further administration, the probate court has both approved the affidavit and allowed resignation of the administrators without appointing successors, the verified account is sufficient to close the administration. Even the probate court has no power to "disapprove" a final account.

* [Schuld v. Dembrinski](https://casetext.com/case/schuld-v-dembrinski?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p487)

12 S.W.3d 485 (Tex. App. 2000)[Cited 17 times](https://casetext.com/case/schuld-v-dembrinski/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[1 legal analysis](https://casetext.com/case/schuld-v-dembrinski/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

However, a court empowered with probate jurisdiction may only exercise its probate jurisdiction over "matters incident to an estate" when a probate proceeding relating to such matter is already pending in that court. Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993) (op. on reh'g). In other words, the pendency of a probate proceeding is a requisite for a court's exercise of jurisdiction over matters related to it. See Goodman v. Summit at West Rim, Ltd., 952 S.W.2d 930, 933 (Tex.App.-Austin 1997, no pet.); see also Pullen v. Swanson, 667 S.W.2d 359, 363 (Tex.App.-Houston [14th Dist.] 1984, writ ref'd n.r.e.) (interpreting probate code to mean that statutory probate court has power to hear all matters incident to an estate "only in those instances where a probate proceeding, such as an administration of an estate, is actually pending in the court at the time suit is filed"). Where the record does not reveal that a probate proceeding was taking place or was pending when the instant suit was filed, section 5 of the probate code dealing with matters incident to an estate is not triggered. Qualia v. Qualia, 878 S.W.2d 339, 341 (Tex.App.-San Antonio 1994, writ denied) (op. on reh'g); Sumaruk v. Todd, 560 S.W.2d 141, 144 (Tex.Civ.App.-Tyler 1977, no writ).

* + [Barton v. Buchanan](https://casetext.com/case/barton-v-buchanan?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

No. 03-02-00596-CV, 03-02-00632-CV (Tex. App. Aug. 14, 2003)

Although courts generally do not lose subject matter jurisdiction once it attaches, a probate court is a specialized court that can lose jurisdiction over matters incident to an estate if it loses jurisdiction over the probate matters. Id. (citing In re Estate of Hanau, 806 S.W.2d 900, 904 (Tex.App.-Corpus Christi 1991, writ denied)). **In other words, once an estate closes, incident claims are pendent or ancillary to nothing, and the probate court loses jurisdiction**. Id.; see also Schuld v. Dembrinski, 12 S.W.3d 485, 487 (Tex.App.-Dallas 2000, no pet.) ("the pendency of a probate proceeding is a requisite for a court's exercise of jurisdiction over matters related to it"); Garza v. Rodriguez, 18 S.W.3d 694, 698 (Tex.App.-San Antonio 2000, no pet.) ("before a matter can be regarded as incident to an estate . . . a probate proceeding must actually be pending").

* + [Sumaruk v. Todd](https://casetext.com/case/sumaruk-v-todd?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p144)

560 S.W.2d 141 (Tex. Civ. App. 1977) [Cited 22 times](https://casetext.com/case/sumaruk-v-todd/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

We are not in accord with defendant's interpretation. The motivation behind the enactment of this section was to increase the powers of the probate court so that it could more fully and ably settle decedent's estates in the one proceeding. See Schwartzel Wilshusen, Texas Probate Jurisdiction: New Patches for the Texas Probate Code, 54 Texas L.Rev. 372, 382-3 (1976). Therefore, we interpret this section dealing with "matters incident to an estate" to apply only to those matters in which the "controlling issue" is the settlement, partition or distribution of an estate. Schwartzel Wilshusen, 54 Texas L.Rev. 372 at 383, supra. If a probate proceeding, such as the administration of the estate, were pending in the statutory probate court at the time this suit was filed, section 5 of the Probate Code would apply to allow the claim by the estate to be filed in the statutory probate court in which such probate proceeding was pending. The record does not reveal that any probate proceeding was taking place or pending at the time the instant suit was filed. Since no administration of the estate was taking place, sec. 5 of the Probate Code dealing with matters incident to an estate does not come into play. Boyd v. Ratliff, 541 S.W.2d 223 (Tex.Civ.App. Dallas 1976, no writ). See also Cowgill v. White, 543 S.W.2d 437 (Tex.Civ.App. Corpus Christi 1976, writ ref'd n. r. e.); Parr v. White, 543 S.W.2d 440 (Tex.Civ.App. Corpus Christi 1976, writ ref'd n. r. e.).

* + [Lee v. Ronald E. Lee Jr., Katherine Lee Stacy, & Legacy Trust Co.](https://casetext.com/case/lee-v-ronald-e-lee-jr-katherine-lee-stacy-legacy-trust-co-1?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p213)

528 S.W.3d 201 (Tex. App. 2017) [Cited 19 times](https://casetext.com/case/lee-v-ronald-e-lee-jr-katherine-lee-stacy-legacy-trust-co-1/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

See, e.g., Tex. Est. Code Ann. § 36.001 (defining the term "probate proceeding"); Valdez v. Hollenbeck, 465 S.W.3d 217, 224 n.8 (Tex. 2015) (explaining that "[t]he heirs initially filed their lawsuit in the original probate proceeding as a suit appertaining and incident to a probate estate under [the predecessor statute] section 5A of the Probate Code," under which "a probate proceeding must be pending for a probate court to exercise jurisdiction over matters related to that proceeding"); Frost Nat'l Bank v. Fernandez, 315 S.W.3d 494, 506 (Tex. 2010) (holding that a probate court lacked jurisdiction over a proceeding to declare heirship because a "court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate proceeding related to such matters is already pending in that court" (emphasis added) (quoting Bailey v. Cherokee Cty. Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993) )); In re John G. & Marie Stella Kenedy Mem'l Found., 315 S.W.3d 519, 522 (Tex. 2010) (orig. proceeding) (quoting the same language from Bailey ); Goodman v. Summit at W. Rim, Ltd., 952 S.W.2d 930, 933 (Tex. App.—Austin 1997, no pet.) (citing Bailey ); In re Estate of Hanau, 806 S.W.2d 900, 904 (Tex. App.—Corpus Christi 1991, writ denied) ("The trial court has power to hear all matters incident to an estate only in those instances where a probate proceeding, such as the administration of an estate, is actually pending in the court in which the suit is filed, relating to a matter incident to that estate." (emphasis added) (citing Interfirst Bank–Hous. v. Quintana Petroleum Corp., 699 S.W.2d 864, 873 (Tex. App.—Houston [1st Dist.] 1985, writ ref'd n.r.e.) )); Pullen v. Swanson, 667 S.W.2d 359, 363 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (stating that a statutory probate court's jurisdiction "to hear all matters incident to an estate necessarily presupposes that a probate proceeding is already pending in that court" (emphasis added)).

* + [Pullen v. Swanson](https://casetext.com/case/pullen-v-swanson?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p363)

667 S.W.2d 359 (Tex. App. 1984) [Cited 29 times](https://casetext.com/case/pullen-v-swanson/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

We therefore find that the enlargement of the jurisdiction of the statutory probate courts to include the power to hear all matters incident to an estate necessarily presupposes that a probate proceeding is already pending in that court. The grant of power to hear matters "incident to an estate" is contained in § 5(d). That section provides that "all courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate". Before a probate court may hear all matters incident to an estate, that court must first be exercising original probate jurisdiction. A court is not "exercising" jurisdiction unless and until a matter is actually pending in that court. If this were not so, a statutory probate court could arguably assert jurisdiction over any cause of action if the suit fell within the broad definition of "incident to an estate." We believe that the better rule is that the statutory probate court has the exclusive power to hear all matters incident to an estate "only in those instances where a probate proceeding, such as an administration of an estate, is actually pending in the court at the time suit is filed." Wolford v. Wolford, 590 S.W.2d 769 (Tex.Civ.App. — Houston [14th Dist.] 1979, writ ref'd n.r.e.); Sumaruk v. Todd, 560 S.W.2d 141 (Tex.Civ.App. — Tyler 1977, no writ); 17 M. Woodard E. Smith, Probate and Decedents' Estate §§ 9, 10 (Texas Practice Supp. 1981); Seay v. Hall, 663 S.W.2d 468 (Tex.App. — Dallas 1983, writ pending) (not yet reported).

* + [Wolford v. Wolford](https://casetext.com/case/wolford-v-wolford-1?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p771)

590 S.W.2d 769 (Tex. Civ. App. 1979) [Cited 6 times](https://casetext.com/case/wolford-v-wolford-1/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Tex.Prob Code Ann. § 5(d) (Vernon Supp. 1978-79) providing that all courts exercising the original probate jurisdiction shall have the power to hear "all matters incident to an estate" applies only to those matters in which the controlling issue is the settlement, partition or distribution of an estate and means that the statutory probate court has exclusive jurisdiction only in those instances where a probate proceeding, such as an administration of an estate, is pending in the court at the time suit is filed. Bell v. Hinkle, 562 S.W.2d 35 (Tex.Civ.App.-Houston (14th Dist.) 1978, writ ref'd n.r.e.); Sumaruk v. Todd, 560 S.W.2d 141 (Tex.Civ.App.-Tyler 1977, no writ). This court then must first consider whether in fact there was such an administration of the decedent's estate on file and pending and whether such proceeding dealt with the controlling issues of settlement, partition and distribution of the decedent's estate.

* + [In re Sims](https://casetext.com/case/in-re-sims-22?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p304)

88 S.W.3d 297 (Tex. App. 2002) [Cited 23 times](https://casetext.com/case/in-re-sims-22/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Additionally, the fact that the money deposited with the court in Medina County is part of Cammack's estate does not establish the exclusive jurisdiction of the probate court. A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to the estate when a probate proceeding relating to such matter is already pending in that court. See Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993); Schuld v. Dembrinski, 12 S.W.3d 485, 487 (Tex.App.-Dallas 2000, no pet.). The record clearly reflects that probate proceedings were not pending when Sims filed suit.

* + [In re Azle Manor, Inc.](https://casetext.com/case/in-re-azle-manor?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p414)

83 S.W.3d 410 (Tex. App. 2002) [Cited 2 times](https://casetext.com/case/in-re-azle-manor/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)[1 legal analysis](https://casetext.com/case/in-re-azle-manor/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

See Saenz v. Saenz, 49 S.W.3d 447, 449-50 (Tex.App.-San Antonio 2001, no pet.) (district court properly dismissed trespass to try title case for lack of subject matter jurisdiction because land was subject to probate and thus appertaining to or incident to an estate); Tex. Commerce Bank-Rio Grande Valley, N.A. v. Correa, 28 S.W.3d 723, 726-27 (Tex.App.-Corpus Christi 2000, pet. denied) (holding that probate court has exclusive jurisdiction to hear matters involving the foreclosure of estate property when estate administration is pending in probate court); Herring v. Welborn, 27 S.W.3d 132, 140 (Tex.App.-San Antonio 2000, pet. denied) (holding that district court lacked subject matter jurisdiction over surviving spouse's challenge to county court's order authorizing sale of community property where property was subject to probate); Burns v. Burns, 2 S.W.3d 339, 344 (Tex.App.-San Antonio 1999, no pet.) (district court's exercise of concurrent jurisdiction over suit for accounting of estate assets was improper when administration of estate was already pending in probate court); Henry v. LaGrone, 842 S.W.2d 324, 326 (Tex.App.-Amarillo 1992, orig. proceeding) (because section 5B of probate code "authorizes" probate court to transfer causes appertaining to or incident to an estate when certain conditions are met, probate court did not abuse its discretion in transferring case involving property subject to probate).

* + [Valdez v. Hollenbeck](https://casetext.com/case/valdez-v-hollenbeck-4?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p224)

58 Tex. Sup. Ct. J. 1129 (Tex. 2015) [Cited 121 times](https://casetext.com/case/valdez-v-hollenbeck-4/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

The heirs initially filed their lawsuit in the original probate proceeding as a suit appertaining and incident to a probate estate under former section 5A of the Probate Code, which was repealed in 2009. See Act of May 31, 2009, 81st Leg., R.S., ch. 1351, § 12(h), 2009 Tex. Gen. Laws 4273, 4279. However, a probate proceeding must be pending for a probate court to exercise jurisdiction over matters related to that proceeding under former section 5A. See, e.g., Frost Nat'l Bank v. Fernandez, 315 S.W.3d 494, 506 (Tex. 2010) (acknowledging that a court may exercise its probate jurisdiction over “matters incident to an estate” only when a probate proceeding is already pending in that court (quoting Bailey v. Cherokee Cnty. Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993) )); In re Sims, 88 S.W.3d 297, 304 n. 3 (Tex. App.—San Antonio 2002, orig. proceeding) (same); Schuld v. Dembrinski, 12 S.W.3d 485, 487 (Tex. App.—Dallas 2000, no pet.) (same). A bill of review, however, is a direct attack on a judgment and only the court rendering the original judgment has jurisdiction over the proceeding. Frost Nat'l Bank, 315 S.W.3d at 504. District courts have general jurisdiction over all civil actions, proceedings, and remedies except when exclusive jurisdiction is vested in another tribunal. Tex. Const. art. V § 8 ; Tex. Gov't Code§§ 24.007 –.008.

* + [Bell v. Hinkle](https://casetext.com/case/bell-v-hinkle?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p38)

562 S.W.2d 35 (Tex. Civ. App. 1978) [Cited 8 times](https://casetext.com/case/bell-v-hinkle/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Tex.Prob. Code Ann. § 5(c)-(d) (Supp. 1978). Section 5 of the Probate Code increased the powers of the probate court so that it could more effectively settle decedents' estates in one proceeding. Sumaruk v. Todd, 560 S.W.2d 141 (Tex.Civ.App. Tyler, 1977) (not yet reported); see Schwartzel Wilshusen, Texas Probate Jurisdiction: New Patches for the Texas Probate Code, 54 Tex.L.Rev. 372, 382-83 (1976). But this section does not affect the district court's jurisdiction where there is no administration pending and none is necessary. See M. Woodward E. Smith, Texas Practice, Probate and Decedents' Estates, Ch. 1, § 10 at 16, and Ch. 2, § 23 at 20 (Supp. 1975). Matters incident to an estate which give the statutory probate courts exclusive jurisdiction apply only to those matters in which the controlling issues are the settlement, partition or distribution of an estate. Sumaruk v. Todd, supra; Schwartzel Wilshusen, supra at 383; see Cowgill v. White, 543 S.W.2d 437 (Tex.Civ.App. Corpus Christi 1976, no writ); Elliott v. Elliott, 208 S.W.2d 709 (Tex.Civ.App. Fort Worth 1948, writ ref'd); Zamora v. Gonzalez, 128 S.W.2d 166 (Tex.Civ.App. San Antonio 1939, writ ref'd). Thus the district court's jurisdiction cannot be exercised so as to defeat the jurisdiction of the county court "to probate wills and grant letters testamentary to executors and to administer estates in accordance with the terms of a legal and valid will." Buchner v. Wait, 137 S.W. 383, 388 (Tex.Civ.App. Galveston 1911, writ ref'd). Here the time for administration had long passed and none was pending.

* + [Lawton v. Lawton](https://casetext.com/case/lawton-v-lawton-10?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p5)

NO. 01-12-00932-CV (Tex. App. Mar. 6, 2014)

Although courts generally do not lose subject matter jurisdiction once it attaches, a probate court is a specialized court that can lose jurisdiction over matters incident to an estate if it loses jurisdiction over the probate matters. See Goodman v. Summit at West Rim, Ltd., 952 S.W.2d 930, 933 (Tex. App.—Austin 1997, no pet.). **In other words, once an estate closes, incident claims are pendent or ancillary to nothing, and the probate court loses jurisdiction**. Id.; see also Schuld v. Dembrinski, 12 S.W.3d 485, 487 (Tex. App.—Dallas 2000, no pet.) ("The pendency of a probate proceeding is a requisite for a court's exercise of jurisdiction over matters related to it."); Garza v. Rodriguez, 18 S.W.3d 694, 698 (Tex. App.—San Antonio 2000, no pet.) ("Before a matter can be regarded as incident to an estate . . . a probate proceeding must actually be pending.").

* + [Green v. Watson](https://casetext.com/case/green-v-watson-4?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p243)

860 S.W.2d 238 (Tex. App. 1993) [Cited 22 times](https://casetext.com/case/green-v-watson-4/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Although section 5(e) gives all courts exercising original probate jurisdiction, like the Williamson County court, the power to hear all matters incident to the estate, the grant of that power is not exclusive of the probate jurisdiction of other courts. See Goodwin v. Kent, 745 S.W.2d 466, 469 (Tex.App. — Tyler 1988, no writ); DeBlanc v. Renfrow, 728 S.W.2d 409, 411 (Tex.App. — Beaumont 1987, writ ref'd n.r.e.); Pullen v. Swanson, 667 S.W.2d 359, 364 (Tex.App. — Houston [14th Dist.] 1984, writ ref'd n.r.e.). But see Estate of Torrance v. State, 812 S.W.2d 393, 396 (Tex.App. — El Paso 1991, no writ) (no concurrent jurisdiction between county courts and district courts for probate matters). Section 5A gives district and county courts concurrent jurisdiction to hear matters incident to an estate in specific situations. See Code § 5A(b); Mejorada v. Gonzalez, 663 S.W.2d 891, 892 (Tex.App. — San Antonio 1983, no writ); see also Gaynier v. Ginsberg, 763 S.W.2d 461, 463 (Tex.App. — Dallas 1988, no writ). **Therefore, sections 5(c), (e) and 5A, together, give the statutory probate courts and county courts at law dominant, rather than exclusive, jurisdiction over matters incident to the estate once probate proceedings have been filed.** See First State Bank v. Bishop, 685 S.W.2d 732, 736 (Tex.App. — Houston [1st Dist.] 1985, writ ref'd n.r.e.); Mejorada, 663 S.W.2d at 892-93. The constitutional grant of general jurisdiction to district courts, coupled with the Probate Code's specific grants to the district courts of jurisdiction over matters incident to estates, vests concurrent probate jurisdiction in the district courts and the county courts at law. We sustain Appellant's first point of error. However, as we will develop below, sustaining this point does not dispose of the matter before us.

* + [Baker v. Baker](https://casetext.com/case/baker-v-baker-62008?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p4)

NO. 02-18-00051-CV (Tex. App. Sep. 6, 2018)[Cited 5 times](https://casetext.com/case/baker-v-baker-62008/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Pursuant to the Texas Estates Code, "A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by [s]ection 32.007 or with the jurisdiction of any other court." Tex. Est. Code Ann. § 32.005(a) (West 2014) (emphasis added). A "probate proceeding" includes an application, petition, motion, or action regarding estate administration, id. § 31.001(4) (West 2014), and a claim "related to the probate proceeding" includes an action for trial of the right to property that is estate property. Id. § 31.002(a)(6), (c); see also Wallace v. Wallace, No. 05-17-00447-CV, 2017 WL 4479653, at \*3 (Tex. App.—Dallas Oct. 9, 2017, no pet.) (mem. op.). However, to trigger a statutory probate court's exclusive subject-matter jurisdiction over a cause "related to the probate proceeding," a probate proceeding must already be pending. See Schuld v. Dembrinski, 12 S.W.3d 485, 487 (Tex. App.—Dallas 2000, no pet.) (recognizing that "a court empowered with probate jurisdiction may only exercise its probate jurisdiction over 'matters incident to an estate' when a probate proceeding relating to such matter is already pending in that court" (quoting Bailey v. Cherokee Cty. Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993) (op. on reh'g))); Garza v. Rodriguez, 18 S.W.3d 694, 698 (Tex. App.—San Antonio 2000, no pet.) ("[B]efore a matter can be regarded as incident to an estate . . . a probate proceeding must actually be pending.").

* + [Wallace v. Collins](https://casetext.com/case/wallace-v-collins?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p260)

988 S.W.2d 258 (Tex. App. 1998)[Cited 1 time](https://casetext.com/case/wallace-v-collins/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

The trial court has the power to hear all matters incident to an estate only in those instances where a probate proceeding, such as the administration of an estate, is actually pending in the court in which the suit is filed. Estate of Hanau, 806 S.W.2d 900, 904 (Tex.App. — Corpus Christi 1991, writ denied). While the estate is still open, the trial court has authority to remove an independent executor, compel an accounting, or order a distribution. See id. The statute of limitations will not bar Wallace's lawsuits if the estate is still open. Id.

* + [Jansen v. Fitzpatrick](https://casetext.com/case/jansen-v-fitzpatrick?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p432)

14 S.W.3d 426 (Tex. App. 2000)[Cited 45 times](https://casetext.com/case/jansen-v-fitzpatrick/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[1 legal analysis](https://casetext.com/case/jansen-v-fitzpatrick/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

In a suit to set aside a deed, the district court has exclusive jurisdiction to hear and determine the matter when the proper allegations as to capacity to sue are made and proven. See Tex. Const. art. V, § 8; Tex. Gov't Code Ann. § 24.007 (Vernon 1988); see also Trevino, 486 S.W.2d at 200. The Texas Probate Code grants exclusive jurisdiction to county courts sitting in probate only when the controlling issues are the settlement, partition, or distribution of an estate. See Bell v. Hinkle, 562 S.W.2d 35, 37-38 (Tex.Civ.App.-Houston [14th Dist.] 1978, writ ref'd n.r.e.). In a non-probate matter, the district court may assume jurisdiction and determine the heirs of the decedent as long as there is no probate proceeding pending in the county court. See Estate of Maxey, 559 S.W.2d 458, 460 (Tex.Civ.App.-Texarkana 1977, writ ref'd n.r.e.); see also Trevino, 486 S.W.2d at 200 (finding the district court had exclusive jurisdiction to determine heirship in suit to set aside a deed). However, for a court to have jurisdiction to determine heirship, the estate must own real property, or if there is none, personal property, in that county. See Tex. Prob. Code Ann. § 48 (Vernon 1980). The definition of personal property includes choses in action. See id. at § 3 (Vernon Supp. 1999). A chose in action is a personal right not reduced to possession, but recoverable by a lawsuit. See Vinson Elkins v. Moran, 946 S.W.2d 381, 389 (Tex.App.-Houston [14th Dist.] 1997, writ dism'd by agr.). A right to set aside a deed is a personal right and therefore a chose in action. See Glenney v. Crane, 352 S.W.2d 773, 777 (Tex.Civ.App. Houston 1961, writ ref'd n.r.e.); see also McMeens v. Pease, 878 S.W.2d 185, 190 (Tex.App.-Corpus Christi 1994, writ denied) (finding a suit to set aside a deed is a suit of a personal nature and not a suit to recover real estate).

* + [Herring v. Welborn](https://casetext.com/case/herring-v-welborn?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p140)

27 S.W.3d 132 (Tex. App. 2000)[Cited 75 times](https://casetext.com/case/herring-v-welborn/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[1 legal analysis](https://casetext.com/case/herring-v-welborn/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

The Legislature has the power to increase or diminish statutory county court and district court probate jurisdiction. To this end, the Legislature has conferred broad jurisdiction upon the San Patricio court, a statutory county court empowered to sit in probate. Once a probate proceeding is under way, the statutory county court's authority to deal with all matters incident to an estate is triggered. See Schuld v. Dembrinksi, 12 S.W.3d 485, 487 (Tex.App.-Dallas 2000, no pet.) (allowing a partition proceeding among heirs to proceed in a county court at law because no probate proceeding was pending in the statutory probate court). "In other words, the pendency of a probate proceeding is a requisite for a court's exercise of jurisdiction over matters related to it." Id. The broad authority of the San Patricio court, which is ongoing because of the continuing administration of Ethel's estate, exists to the exclusion of the Wilson County district court in matters that are incident to the estate.

* + [Lawton v. Lawton](https://casetext.com/case/lawton-v-lawton-13?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p9)

NO. 01-12-00932-CV (Tex. App. Jul. 10, 2014)[Cited 2 times](https://casetext.com/case/lawton-v-lawton-13/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Having concluded that the estate is closed, we consider which of John's claims, if any, survive on appeal. John's first issue concerns the trial court's denial of his motion to remove David as executor. In In re Estate of Hanau, 806 S.W.2d 900 (Tex. App.—Corpus Christi 1991, writ denied), the court of appeals noted that the "trial court has power to hear all matters incident to an estate only in those instances where a probate proceeding, such as the administration of an estate, is actually pending in the court in which the suit is filed, relating to a matter incident to that estate." Id. at 904. The court concluded that once the estate had closed, the trial court lost jurisdiction to remove the executrix and appoint a successor independent executor, and that these issues had become moot. See id. Thus, under Hanau, John's issue concerning the removal of David as executor of the estate under Probate Code section 149C(a) is moot. Moreover, John concedes that if the estate is closed, his claim seeking to remove David as executor is moot.

* + [Lawton v. Lawton](https://casetext.com/case/lawton-v-lawton-10?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p9)

NO. 01-12-00932-CV (Tex. App. Mar. 6, 2014)

Having concluded that the estate is closed, we consider which of John's claims, if any, survive on appeal. John's first issue concerns the trial court's denial of his motion to remove David as executor. In In re Estate of Hanau, 806 S.W.2d 900 (Tex. App.—Corpus Christi 1991, writ denied), the court of appeals noted that the "trial court has power to hear all matters incident to an estate only in those instances where a probate proceeding, such as the administration of an estate, is actually pending in the court in which the suit is filed, relating to a matter incident to that estate." Id. at 904. The court concluded that once the estate had closed, the trial court lost jurisdiction to remove the executrix and appoint a successor independent executor, and that these issues had become moot. See id. Thus, under Hanau, John's issue concerning the removal of David as executor of the estate under Probate Code section 149C(a) is moot. Moreover, John concedes that if the estate is closed, his claim seeking to remove David as executor is moot.

* + [Garza v. Rodriguez](https://casetext.com/case/garza-v-rodriguez-2?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p698)

18 S.W.3d 694 (Tex. App. 2000)[Cited 24 times](https://casetext.com/case/garza-v-rodriguez-2/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[2 legal analyses](https://casetext.com/case/garza-v-rodriguez-2/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

As noted, at the time appellants filed suit in the district court, no probate matter concerning either Pena's estate or Santiago's estate was pending. Appellants thus conclude that because a probate matter was not pending when appellants filed suit, and because appellants' suit concerns matters traditionally outside the scope of a probate court's jurisdiction, the district court had jurisdiction over the suit to construe the provisions of Pena's will. In support of this argument, appellants rely primarily upon Crawford v. Williams, 797 S.W.2d 184 (Tex.App.-Corpus Christi 1976, writ denied).

* + [Schuld v. Dembrinski](https://casetext.com/case/schuld-v-dembrinski?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p489)

12 S.W.3d 485 (Tex. App. 2000)[Cited 17 times](https://casetext.com/case/schuld-v-dembrinski/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[1 legal analysis](https://casetext.com/case/schuld-v-dembrinski/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

With respect to Omar Gilbert Pete, his will was admitted to probate as muniment of title on September 16, 1996 in the Dallas County Probate Court No. 1. The order provided as follows: "[T]here is no necessity for the administration of decedent's estate and the probating of decedent's Will as a Muniment of Title is therefore proper." Consequently, no probate proceeding with respect to Omar Gilbert Pete was pending at the time Schuld brought her suit. Cf. Clark v. Barr, 239 S.W.2d 114, 115 (Tex.Civ.App.-Fort Worth 1951, no writ) (probate court's order reciting no administration of estate necessary and admitting will to probate as muniment of title did not render order "any less final or effective"). Thus, the statutory probate court did not have exclusive jurisdiction over any matter incident to his estate.

* + [Frost Nat. Bank v. Fernandez](https://casetext.com/case/frost-nat-bank-v-fernandez?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p507)

315 S.W.3d 494 (Tex. 2010)[Cited 626 times](https://casetext.com/case/frost-nat-bank-v-fernandez/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Moreover, section 48 of the Probate Code provides that a proceeding to declare heirship may be filed in the probate court only when a person died intestate as to some or all of his or her property, when a will has been probated or estate administered but real or personal property was omitted, or when there has not been a final disposition. TEX. PROB. CODE § 48(a) (permitting suit for declaration of heirship "[w]hen a person dies intestate" and "there shall have been no administration in this State upon his estate" or when a will has been probated or an estate administered but property was "omitted from such will or from such administration"); see id. § 3(o) (defining "heirs" as "those persons . . . who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate"). That is not the case here. Because Kenedy left a will that disposed of all his property, as determined by the district court in the Humble Oil suit, and because his estate was fully administered and closed, the Probate Code does not authorize the probate court to determine heirship. See Cogley v. Welch, 34 S.W.2d 849, 853 (Tex.Comm'n App. 1931, judgm't adopted) (holding that court has "absolutely no authority . . . to exercise jurisdiction to declare heirship" when decedent died testate); McMahan v. Naylor, 855 S.W.2d 193, 194-95 (Tex.App.-Corpus Christi 1993, writ denied) (recognizing that issue of intestacy should be determined before heirship); Guajardo v. Chavana, 762 S.W.2d 683, 684-85 (Tex.App.-San Antonio 1988, writ denied) (holding that heirship is not justiciable before intestacy is established); Buckner Orphans Home v. Berry, 332 S.W.2d 771, 775-76 (Tex.Civ.App.-Dallas 1960, writ ref'd n.r.e.) (holding that putative heirs "would first have to annul the wills left by deceased" before they had "such interest as would entitle them to come into the probate court asking for a declaration of heirship, or claiming rights in the estate as heirs"). Authority to decide Fernandez's heirship claims rests solely with the district court as part of its exclusive jurisdiction over the bills of review.

* + [Garza v. Rodriguez](https://casetext.com/case/garza-v-rodriguez-2?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p698)

18 S.W.3d 694 (Tex. App. 2000)[Cited 24 times](https://casetext.com/case/garza-v-rodriguez-2/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[2 legal analyses](https://casetext.com/case/garza-v-rodriguez-2/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

In 1973, the county court's probate jurisdiction was expanded when the Legislature undertook a two-step reform of probate jurisdiction. Statute Note, Probate Code Section 5: Jurisdictional Expansion Through Redefinition: Is It Constitutional?, 37 Baylor L. Rev. 291, 294-95 (1985). First, it proposed an amendment to article 5, section 8 of the constitution authorizing a statutory revision of probate jurisdiction. Id. at 95-96. Second, to carry out the proposed constitutional mandate, it amended section 5 of the Probate Code. As amended, section 5 expanded the jurisdiction of the county court in probate matters to allow it the power to hear all matters incident to an estate, including, but not limited to, an action to construe a will. See Tex. Prob. Code Ann. § 5(d) (Vernon Supp. 2000). Section 5's clause "matter incident to an estate," however, will not create jurisdiction for the county court in the absence of a pending probate matter. See Sumarak v. Todd, 560 S.W.2d 141, 144 (Tex.Civ.App.-Tyler 1977, no writ). Stated differently, before a matter can be regarded as incident to an estate over which the county court acting as a probate court would have jurisdiction, a probate proceeding must actually be pending. See 17 M.K. Woodward Ernest Smith, III, Probate and Decedents' Estates § 6 (Texas Practice 1971) (West Supp. 2000). As explained by the Supreme Court, a court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending. Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993).

* + [Barton v. Buchanan](https://casetext.com/case/barton-v-buchanan?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

No. 03-02-00596-CV, 03-02-00632-CV (Tex. App. Aug. 14, 2003)

Whether a trial court has subject matter jurisdiction is a question of law that we review de novo. Herring v. Welborn, 27 S.W.3d 132, 136 (Tex.App.-San Antonio 2000, pet. denied). Generally, district courts have exclusive jurisdiction to determine title to real property. See Tex. Const. art. 5, § 8; Tex. Gov't Code Ann. § 26.043 (West 1988); Falcon v. Ensignia, 976 S.W.2d 336, 338 (Tex.App.-Corpus Christi 1998, no pet.). However, a county court at law sitting in probate has jurisdiction to hear "all matters incident to an estate" already pending before the court. Tex. Prob. Code Ann. § 5(f) (West 2003); see Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 585 (Tex. 1993); Goodman v. Summit at West Rim, Ltd., 952 S.W.2d 930, 933 (Tex.App.-Austin 1997, no pet.). Matters incident to an estate are "generally all matters relating to the settlement, partition, and distribution" of the estate, including claims by or against the estate and actions to try title to land incident to the estate. Tex. Prob. Code Ann. § 5A(a) (West 2003); see Bailey, 862 S.W.2d at 585. Therefore, a statutory county court sitting in probate would have jurisdiction over a suit regarding title to real property only if it was incident to an estate being probated in the county court. Goodman, 952 S.W.2d at 933.

* + [In re Guardianship](https://casetext.com/case/in-re-guardianship?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p20)

330 S.W.3d 11 (Tex. App. 2010)[Cited 38 times](https://casetext.com/case/in-re-guardianship/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

A judgment or order is void when it is apparent that the court rendering it lacked jurisdiction of either the parties or the subject matter of the lawsuit. See In re Mask, 198 S.W.3d 231, 235 (Tex. App.-San Antonio 2006, orig. proceeding); In re Bokeloh, 21 S.W.3d 784, 794 (Tex. App.-Houston [14th Dist] 2000, orig. proceeding). For a trial court to have jurisdiction over a party, the party must be properly before the court in the pending controversy as authorized by procedural statutes and rules. Perry v. Ponder, 604 S.W.2d 306, 322 (Tex.Civ.App.-Dallas 1980, no writ). Generally, a trial court does not have jurisdiction to enter a judgment or order against a respondent unless the record shows proper service of citation on the respondent, or an appearance by the respondent, or a written memorandum of waiver at the time the judgment or order was entered. TEX.R. CIV. P. 124; Werner v. Colwell, 909 S.W.2d 866, 869-70 (Tex. 1995); Autozone, Inc. v. Duenes, 108 S.W.3d 917, 920 (Tex.App.-Corpus Christi 2003, no pet.). If a trial court enters a judgment before it acquires jurisdiction of the parties, the judgment is void. In re Mask, 198 S.W.3d at 235; In re B.A.G., 794 S.W.2d 510, 511-12 (Tex.App.-Corpus Christi 1990, no writ) (citing Browning v. Placke, 698 S.W.2d 362, 363 (Tex. 1985)).

* + [Pollard v. Pollard](https://casetext.com/case/pollard-v-pollard-4?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p251)

316 S.W.3d 246 (Tex. App. 2010)[Cited 14 times](https://casetext.com/case/pollard-v-pollard-4/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Having concluded that Merkel and Pollard were married at the time of her death, we disagree with the Executor's contention that despite Merkel's death, the trial court retained jurisdiction to determine a division of property in the divorce action. Generally, when a party to a suit dies, the suit will not abate if the cause of action survives the death of that party. TEX.R. CIV. P. 150. However, in Texas, "[i]t is well settled that a cause of action for a divorce is purely personal and that the cause of action for a divorce terminates on the death of either spouse prior to the rendition of a judgment granting a divorce." Garrison v. Tex. Commerce Bank, 560 S.W.2d 451, 453 (Tex.Civ.App.-Houston [1st Dist.] 1977, writ ref'd n.r.e.); see also Whatley v. Bacon, 649 S.W.2d 297, 299 (Tex. 1983) (orig. proceeding) (death of a party abates divorce action and its incidental inquiries of property rights and child custody); see also Smelscer v. Smelscer, 901 S.W.2d 708, 710 (Tex.App.-ElPaso 1995, no writ) (death of husband during divorce action caused abatement of divorce action along with subsidiary issue of child custody); McKenzie v. McKenzie, 667 S.W.2d 568, 571-72 (Tex.App.-Dallas 1984, no writ). The death of either party to the divorce action prior to entry of the divorce decree withdraws the court's subject matter jurisdiction over the divorce action. See Garcia v. Daggett, 742 S.W.2d 808, 810 (Tex.App.-Houston [1st Dist.] 1987, orig. proceeding [leave denied]) (death of wife immediately deprived court of jurisdiction over divorce action, and temporary custody orders entered after death of wife were void); Parr v. White, 543 S.W.2d 445, 448 (Tex.Civ.App.-Corpus Christi 1976), writ ref'd n.r.e. by per curiam op., 559 S.W.2d 344 (Tex. 1977) (death of either party prior to entry of divorce decree withdraws court's subject matter jurisdiction of underlying divorce litigation).

* + [Burns v. Burns](https://casetext.com/case/burns-v-burns-ii?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p344)

2 S.W.3d 339 (Tex. App. 1999)[Cited 9 times](https://casetext.com/case/burns-v-burns-ii/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action incident to an estate shall be brought in a statutory probate court rather than in the district court . Tex. Prob. Code Ann. § 5(c) (Vernon Supp. 1999). If an administration is already pending in one court properly exercising probate jurisdiction when a subsequent suit is filed in the district court, the jurisdiction of the original probate court is dominant. Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 586 (Tex. 1993); Curtis v. Gibbs, 511 S.W.2d 263, 267 (Tex. 1974); see Carlisle v. Bennett, 801 S.W.2d 589, 592 (Tex.App.-Corpus Christi 1990, no writ); Pullen v. Swanson, 667 S.W.2d 359, 362 (Tex.App.-Houston [14th Dist.] 1984, writ ref'd n.r.e.).

* + [Jampole v. Matthews](https://casetext.com/case/jampole-v-matthews?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p61)

857 S.W.2d 57 (Tex. App. 1993)[Cited 25 times](https://casetext.com/case/jampole-v-matthews/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

The parties agree that the usual statute of limitations is four years for fraud and four years for breach of contract. If the four-year statute of limitations applies, limitations had not run on the fraud and breach of contract causes of action when suit was filed on October 17, 1989, because the causes of action accrued at the earliest in June or August 1986, when Stanley Jampole and Matthews agreed to modify the fee. However, Matthews and the firm argue that the Jampole family's cause of action is really one for legal malpractice, and that, no matter what label is given the cause of action, legal malpractice is governed by a two-year statute of limitations. They rely on Willis v. Maverick, 760 S.W.2d 642 (Tex. 1988), Pham v. Nguyen, 763 S.W.2d 467 (Tex.App. — Houston [14th Dist.] 1988, writ denied), Sledge v. Alsup, 759 S.W.2d 1 (Tex.App. — El Paso 1988, no writ), Black v. Wills, 758 S.W.2d 809 (Tex.App. — Dallas 1988, no writ), Gabel v. Sandoval, 648 S.W.2d 398 (Tex.App. — San Antonio 1983, writ dism'd), Woodburn v. Turley, 625 F.2d 589 (5th Cir. 1980), and Citizens State Bank v. Shapiro, 575 S.W.2d 375 (Tex.Civ.App. — Tyler 1978, writ ref'd n.r.e.). They acknowledge a contrary holding in Estate of Degley v. Vega, 797 S.W.2d 299 (Tex.App. — Corpus Christi 1990, no writ).

* + [Garza v. Rodriguez](https://casetext.com/case/garza-v-rodriguez-2?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p697)

18 S.W.3d 694 (Tex. App. 2000)[Cited 24 times](https://casetext.com/case/garza-v-rodriguez-2/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[2 legal analyses](https://casetext.com/case/garza-v-rodriguez-2/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Appellants argue that the district court erred in dismissing their suit to construe Pena's will because the district court has concurrent jurisdiction with the county court over matters "incident to an estate" when, as here, a probate matter is not pending in the county court. Construction of a will and issues of title are matters incident to an estate; thus, the district court had jurisdiction over the matters because the county court's probate jurisdiction had not been invoked. Cf. Bank of Southwest, Nat' l Assoc. v. Stehle, 660 S.W.2d 572, 574 (Tex.App.-San Antonio 1983, writ ref'd n.r.e.) (suit for title filed in district court while administration of estate was pending in probate court was properly dismissed because probate court had acquired exclusive jurisdiction over cause of action incident to estate). Appellants further assert that the district court had jurisdiction to act because their pleadings requested the imposition of a constructive trust. See Pope v. Garrett, 147 Tex. 18, 211 S.W.2d 559, 561-62 (1948).

* + [Rouse v. Tex. Capital Bank, N.A.](https://casetext.com/case/rouse-v-tex-capital-bank-1?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p8)

394 S.W.3d 1 (Tex. App. 2011)[Cited 12 times](https://casetext.com/case/rouse-v-tex-capital-bank-1/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Against this backdrop we consider the Oklahoma courts' actions. There is no question that the underlying suit was filed first in Texas, and neither party disputes that the Texas court has jurisdiction over the Guaranty issues. These facts, coupled with the unequivocal language of the Guaranty's forum selection clause compel the conclusion that Rouse is contractually obligated to litigate his tort claims in Texas. Yet the Oklahoma court refused to enforce the forum selection clause or stay the Oklahoma proceeding. The Texas trial court specifically found that despite TCB's requests, the Oklahoma trial court and the Oklahoma Supreme Court declined to stay or abate the claims against TCB in the Oklahoma suit. Because of this refusal to act, the trial court could reasonably conclude that Oklahoma was not a cooperative jurisdiction. Cf. Travelers Ins. Co., 2006 WL 950101 at \*5 (foreign jurisdiction that stayed proceeding pending conclusion of Texas action deemed cooperative jurisdiction); see also London Market Insurers v. American Home Assur. Co., 95 S.W.3d 702, 707 (Tex.App.-Corpus Christi 2003, no pet.) (concluding Texas court's jurisdiction threatened by New York action involving coverage issues under same insurance policies). The trial court also found that in the absence of injunctive relief, TCB would be without an adequate remedy at law because it had exhausted its pre-appeal remedies in the Oklahoma courts. Comity notwithstanding, a court is entitled to protect its jurisdiction by enjoining the parties to a suit filed in a sister state. See Espada Garrido v. Iglesias de Espada, 785 S.W.2d 888, 890 (Tex.App.-El Paso 1990, no writ). Texas is entirely sovereign and unrestricted in its powers, whether legislative, judicial, or executive, and it does not acknowledge the right of any other states to hinder its own sovereign acts or proceedings. See In re State Farm Mut. Ins. Co., 192 S.W.3d 897, 901 (Tex.App.-Tyler 2006, orig. proceeding). In view of the Oklahoma courts' apparent reluctance to extend courteous cooperation or function harmoniously with the Texas court, we cannot conclude the trial court erred in determining there was a threat to its jurisdiction.

* + [Mays v. Perkins](https://casetext.com/case/mays-v-perkins?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p226)

927 S.W.2d 222 (Tex. App. 1996)[Cited 16 times](https://casetext.com/case/mays-v-perkins/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

The issue of degree of participation arises in a variety of contexts, and the availability of writ of error is determined after considering the differences in the contexts in which the issue arises. The following cases have held that certain activities were not sufficient involvement in the trial to preclude review by writ of error: Stubbs v. Stubbs, 685 S.W.2d 643, 645 (Tex. 1985) (signing an agreement incident to divorce which was revocable before rendition of judgment); Nueces County Housing Assistance, Inc. v. M M Resources Corp., 806 S.W.2d 948, 951 n. 2 (Tex.App. — Corpus Christi 1991, writ denied) (filing post-judgment motions); Tramco Enters., Inc. v. Independent American Sav. Ass'n, 739 S.W.2d 944, 947 (Tex.App. — Fort Worth 1987, no writ) (participating in preliminary hearings but being absent from the final trial); First Dallas Petroleum, Inc. v. Hawkins, 727 S.W.2d 640, 643 (Tex.App. — Dallas 1987, no writ) (filing an answer is not "participation"); Schulz v. Schulz, 726 S.W.2d 256, 258 (Tex.App. — Austin 1987, no writ) (making a general appearance in cause by filing a plea to jurisdiction not "participation"); In re Estate of Nation, 694 S.W.2d 588, 588-89 (Tex.App. — Texarkana 1985, no writ) (filing a plea of intervention); In Interest of Van Hersh, 662 S.W.2d 141, 144 (Tex.App. — Amarillo 1983, no writ) (taking part in preliminary trial proceedings); Alejo v. Pellegrin, 616 S.W.2d 331, 332-33 (Tex.Civ.App. — San Antonio 1981, writ dism w.o.j.) (filing pleadings and giving notice of appeal); Adams v. Isbell, 615 S.W.2d 254, 256 (Tex.App. — Dallas 1981, no writ) (nonsuiting affirmative claims and exiting courtroom before trial on counter-claims began).

* + [In re J7S Inc.](https://casetext.com/case/in-re-j7s-inc?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p379)

979 S.W.2d 374 (Tex. App. 1998)[Cited 5 times](https://casetext.com/case/in-re-j7s-inc/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Finally, relators assert that case law establishes that venue of a guardian's claim may be proper in a county other than where the guardianship estate is pending. See Cone v. Gregory, 814 S.W.2d 413 (Tex.App.-Houston [1st Dist] 1991, orig. proceeding); Robertson v. Gregory, 663 S.W.2d 4, 5 (Tex.App.-Houston [14th Dist.] 1983, no writ); Boyd v. Ratliff, 541 S.W.2d 223, 225-26 (Tex.App.-Dallas 1976, writ dism'd); Luke v. Ormond, 517 S.W.2d 647, 648-49 (Tex.App.-Houston [14th Dist] 1974, no writ). These cases are distinguishable. In Cone, the court upheld a transfer of venue by the probate court in one county to the district court in another county, but only because the district court had exclusive jurisdiction over the guardian's suit to remove a trustee under the Trust Code. Cone, 814 S.W.2d at 414. In Robertson and Boyd, the appellate courts invalidated venue transfers under section 8 of the Probate Code because the suits at issue were not the type of probate or guardianship proceedings governed by section 8. Robertson, 663 S.W.2d at 5; Boyd, 541 S.W.2d at 225-26. Here, there was no attempt to invoke the venue provisions of the Probate Code. See Tex.Prob. Code Ann. §§ 610, 611 (Vernon Supp. 1998). Although the court in Boyd applied the genera] venue statutes, that case was decided long before the enactment of section 5B and the recent holdings of Henry and Lanier. See Act of September 1, 1983, 68th Leg., R.S., ch. 958, § 1, 1983 Tex.GenLaws 5228. Finally, in Luke, the court of appeals applied the general venue statutes only because the partition suit there did not involve a probate matter. Luke, 517 S.W.2d at 648-49. Here, Schaffer's suit involves a matter incident to a pending guardianship estate.

* + [Williams v. National Mortg. Co.](https://casetext.com/case/williams-v-national-mortg-co?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p403)

903 S.W.2d 398 (Tex. App. 1995)[Cited 33 times](https://casetext.com/case/williams-v-national-mortg-co/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

A party has an absolute right to take a nonsuit of a pending claim if it is taken in a timely manner. See TEX.R.CIV.P. 162. Moreover, the granting of a nonsuit is merely a ministerial act by the trial court. Greenberg v. Brookshire, 640 S.W.2d 870, 872 (Tex. 1982) (orig. proceeding) (per curiam). A trial court may not deny a party's right to take a nonsuit. See BHP Petroleum Co. v. Millard, 800 S.W.2d 838, 840-41 (Tex. 1990) (orig. proceeding). If an opposing party has no claim for affirmative relief pending, a trial court's jurisdiction over a cause ends when a notice of nonsuit is given for the only pending claim for affirmative relief. In effect, in such a situation, the filing of a nonsuit divests a trial court of its subject matter jurisdiction. See State ex rel. Dishman v. Gary, 163 Tex. 565, 569-70, 359 S.W.2d 456, 458-59 (1962) (orig. proceeding) (citing Ex parte Norton, 118 Tex. 581, 585, 17 S.W.2d 1041, 1043 (1929) (orig. proceeding)); see also Strawder v. Thomas, 846 S.W.2d 51, 59 (Tex.App. — Corpus Christi 1992, no writ); Ex parte Helle, 477 S.W.2d 379, 384-85 (Tex.Civ.App. — Corpus Christi 1972, orig. proceeding). A party's right to take a nonsuit, however, does not affect an opposing party's pending claim for affirmative relief because the trial court retains jurisdiction over that claim if the trial court initially had subject matter jurisdiction. Although a nonsuit of a party's claims does not end an adverse party's right to be heard on its pending claims for affirmative relief, a claim for affirmative relief filed after a notice of nonsuit is usually ineffective to prevent termination of the lawsuit. See Progressive Ins. Cos. v. Hartman, 788 S.W.2d 424, 426 (Tex.App. — Dallas 1990, orig. proceeding); Strawder, 846 S.W.2d at 59; see also Short v. Hepburn, 89 Tex. 622, 625, 35 S.W. 1056, 1057 (1896); PHB, Inc. v. Goldsmith, 534 S.W.2d 196, 198 (Tex.Civ.App. — Houston [14th Dist.], writ ref'd n.r.e., 539 S.W.2d 60 (Tex. 1976).

* + [Seay v. Hall](https://casetext.com/case/seay-v-hall?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p471)

663 S.W.2d 468 (Tex. App. 1983)[Cited 7 times](https://casetext.com/case/seay-v-hall/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Our holding that Seay's survival cause of action is a matter incident to the estate is neither in conflict with McPherson v. Judge, 592 S.W.2d 406 (Tex.Civ.App. — Amarillo 1979, no writ), nor Wolford v. Wolford, 590 S.W.2d 769 (Tex.Civ.App. — Houston [14 Dist.] 1979, writ ref'd n.r.e.), as appellees assert. Although both of those cases concern personal injury actions, each was a suit against estates and each was decided under probate code provisions existing before the 1979 amendments. McPherson held that the district court, rather than the constitutional county court, had original jurisdiction of the case. That court recognized, however, that the suit was, "in a strict sense, a claim against the estate," and considered the possibility that the county court had concurrent jurisdiction. Nevertheless, that court interpreted the applicable code provisions as in no way depriving the district court of jurisdiction over the matter, nor requiring that the claim be heard in the county court. In Wolford, the court held that the probate court did not have jurisdiction to try a personal injury suit. There Wolford filed an application to be appointed temporary administrator for the sole purpose of accepting service of citation. He then filed suit against the estate as a plaintiff. The Court of Civil Appeals reasoned that the statutory probate court has exclusive jurisdiction only in those instances where a probate proceeding, such as an administration of an estate, is pending in the court when suit is filed, and that matters incident to an estate include only those matters in which the controlling issue is the settlement, partition, or distribution of an estate. 590 S.W.2d at 771. We do not read this decision as holding that a claim against an estate for personal injuries is not a matter incident to the estate; instead that court concluded that since the only matter "pending" in the probate court was the application of Wolford to be appointed temporary administrator for the sole purpose of accepting service of citation, there was no estate to be settled, partitioned, or distributed.

* + [Tuncle v. Jackson](https://casetext.com/case/tuncle-v-jackson?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

No. 06-05-00021-CV (Tex. App. Aug. 9, 2005)[Cited 1 time](https://casetext.com/case/tuncle-v-jackson/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

In his second point of error, Tuncle contends the trial court erred by dismissing his suit for forcible entry and detainer. A forcible entry and detainer action is not an exclusive remedy; it is cumulative. Holcombe v. Lorino, 124 Tex. 446, 79 S.W.2d 307, 309 (1935). Suits for forcible entry and detainer may be prosecuted concurrently with a trespass to try title claim filed with the district court. Id.; Hartzog v. Seeger Coal Co., 163 S.W. 1055, 1059 (Tex.Civ.App.-Dallas 1914, no writ). However, when the question of title to the property "is so integrally linked to the issue of possession that the right to possession cannot be determined without first determining title, then the justice courts and, on appeal, the county courts, lack jurisdiction over the matter." Gibson v. Dynegy Midstream Servs., L.P., 138 S.W.3d 518, 522 (Tex.App.-Fort Worth 2004, no pet.) (citing Dormady v. Dinero Land Cattle Co., 61 S.W.3d 555, 557-58 (Tex.App.-San Antonio 2001, pet. dism'd w.o.j.); Falcon v. Ensignia, 976 S.W.2d 336, 338 (Tex.App.-Corpus Christi 1998, no pet.); Mitchell v. Armstrong Capital Corp., 911 S.W.2d 169, 171 (Tex.App.-Houston [1st Dist.] 1995, writ denied)).

* + [Reliant Energy v. Gonzalez](https://casetext.com/case/reliant-energy-v-gonzalez-1?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p872)

102 S.W.3d 868 (Tex. App. 2003)[Cited 15 times](https://casetext.com/case/reliant-energy-v-gonzalez-1/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)[2 legal analyses](https://casetext.com/case/reliant-energy-v-gonzalez-1/analysis?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

This Court has held that when proceedings have commenced in a statutory probate court, "the probate court has dominant jurisdiction over any subsequent suits incident or appertaining to an estate, and the district court or any other court of concurrent jurisdiction has servient jurisdiction." First State Bank of Bedias v. Bishop, 685 S.W.2d 732, 736 (Tex.App.-Houston [1st Dist.] 1985, writ ref'd n.r.e.) (emphasis added). However, the general rule regarding "dominant jurisdiction" is that, when a court of competent jurisdiction over the subject matter with the power to bring all necessary parties before it acquires the prior right to exercise jurisdiction over a cause of action, no other state court in which a suit was subsequently filed has the right to interfere. Andrews v. Utica Mut. Ins. Co., 647 S.W.2d 22, 25 (Tex.App.-Houston [1st Dist.] 1982, no writ) (citing Texas Employers' Ins. Ass'n v. Baeza, 584 S.W.2d 317, 320 (Tex.Civ.App. Amarillo 1979, no writ)).

* + [Flint v. Jordan](https://casetext.com/case/flint-v-jordan-3?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

No. 02-04-021-CV (Tex. App. Mar. 31, 2005)[Cited 1 time](https://casetext.com/case/flint-v-jordan-3/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action incident to an estate shall be brought in a statutory probate court rather than in the district court. Tex. Prob. Code Ann. §§ 5(c), 5A(b). If an administration is already pending in one court that is properly exercising probate jurisdiction when a subsequent suit is filed in the district court, the jurisdiction of the original probate court is dominant, while the district court or any other court of concurrent jurisdiction has servient jurisdiction. Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581, 586 (Tex. 1993); Curtis v. Gibbs, 511 S.W.2d 263, 267 (Tex. 1974); see Carlisle v. Bennett, 801 S.W.2d 589, 592 (Tex.App.-Corpus Christi 1990, no writ); Pullen v. Swanson, 667 S.W.2d 359, 364 (Tex.App.-Houston [14th Dist.] 1984, writ ref'd n.r.e.) (holding that the last sentence in section 5A(b) is a statutory expression of a policy of judicial self-restraint that, once the jurisdiction of the statutory probate court has attached and is adequate to grant the requested relief, the district court should refrain from exercising its concurrent jurisdiction). Upon timely filing of a plea in abatement or other appropriate motion, the district court or any other court having concurrent jurisdiction with the probate court must immediately relinquish its jurisdiction to the statutory probate court. First State Bank of Bedias v. Bishop, 685 S.W.2d 732, 736 (Tex.App.-Houston [1st Dist.] 1985, writ ref'd n.r.e.); Pullen, 667 S.W.2d at 363-64; see Tarrant County Hosp. Dist. v. Jones, 664 S.W.2d 191, 196 (Tex.App.-Fort Worth 1984, no writ).

* + [Bowen v. Hazel](https://casetext.com/case/bowen-v-hazel?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p797)

723 S.W.2d 795 (Tex. App. 1987)[Cited 2 times](https://casetext.com/case/bowen-v-hazel/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

Appeals in probate matters are distinguishable from the usual appeals in civil cases. Carter v. Carter, 594 S.W.2d 464 (Tex.Civ.App. — San Antonio 1979, writ ref'd n.r.e.). The authority to appeal from an order of a probate court is governed by Tex.Prob. Code Ann. § 5(e) (Vernon 1980), which provides: "All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals." This has been held to mean that an order in a probate proceeding is appealable if it finally adjudicates some substantial right and the order may be final and appealable even though the decision does not fully and finally dispose of the entire probate proceeding. Kelley v. Barnhill, 144 Tex. 14, 188 S.W.2d 385 (1945);

[Bowen v. Hazel](https://casetext.com/case/bowen-v-hazel?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p797)

723 S.W.2d 795 (Tex. App. 1987)[Cited 2 times](https://casetext.com/case/bowen-v-hazel/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false" \t "_blank)

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A court lacking jurisdiction over a claim has no alternative but to dismiss it. See Smith v. Texas Improvement Co., 570 S.W.2d 90, 92 n. 3 (Tex.Civ.App.-Dallas 1978, no writ).

* + [In re Johnson](https://casetext.com/case/in-re-johnson-254?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

Public policy considerations of judicial economy weigh in favor of having parties resolve all disputes in a single proceeding. Massey v. Massey, 807 S.W.2d 391, 397 (Tex.App.-Houston [1st Dist.] 1991, writ denied). Similar considerations apply with regard to the suit in federal court. See Trapnell v. Hunter, 785 S.W.2d 426 (Tex.App.-Corpus Christi 1990, no writ); Williamson v. Tucker, 615 S.W.2d 881 (Tex.Civ.App.-Dallas 1981, writ ref'd n.r.e.). Judge Board's order would be sustainable on this basis.

* + [Speer v. Stover](https://casetext.com/case/speer-v-stover?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false#p739)

711 S.W.2d 730 (Tex. App. 1986)[Cited 12 times](https://casetext.com/case/speer-v-stover/how-cited?jxs=tx&p=1&q=Texas%20Commerce%20Bank%E2%80%94Rio%20Grande%20Valley%20v.%20Correa&sort=relevance&type=case&resultsNav=false)

The correct rule of law is stated in Hughes v. Atlantic Refining Co., 424 S.W.2d 622 (Tex. 1968), wherein the court stated, "jurisdiction is acquired at the time of filing the petition where the subject matter of the suit is within the jurisdiction of the court."