To the honorable Justices,

Appellant appreciates the opportunity to brief the court on the very narrow issue of appellate court jurisdiction as it relates to the law and facts in this particular case. As the Court noted; this appeal was filed after expiration of the time limitations prescribed by statute. While this would give the a priori appearance of a want of appellate court jurisdiction, “*The law is well settled that a void judgment is a nullity that may be attacked at any time*." (citation omitted)); Restatement (Second) of Judgments § 65 cmt. b.” Mitchell v. MAP Res., 649 S.W.3d 180, 196 n.15 (Tex. 2022). "*A formal judgment rendered by a court without jurisdiction of the subject-matter is void, and may be attacked at any time in any manner*." ” Rone v. Marti, 244 S.W. 639, 640 (Tex. Civ. App. 1922).

“While it is wholly unnecessary to appeal from a void judgment, it is nevertheless settled that an appeal may be taken and the appellate court in such a proceeding may declare the judgment void. [Fulton v. Finch, 162 Tex. 351, 346 S.W.2d 823, 827 (1961)](https://casetext.com/case/fulton-v-finch#p827). ” State ex Rel. Latty v. Owens, 907 S.W.2d 484, 486 (Tex. 1995)

“A court's precision in discussing the judgment as void or voidable is important in order to avoid engendering confusion when the distinction is material. Thus, regardless of when the challenge is asserted, if a party challenges a judgment as void, the first inquiry should necessarily be whether the alleged defect renders the judgment void or merely voidable.” PNS Stores, Inc. v. Rivera ex rel. Rivera, 379 S.W.3d 267, 272 n.8 (Tex. 2012)

This appeal challenges the subject matter jurisdiction of a statutory probate court to act in this particular case because the claims filed by the Independent Executor after the independent administration had closed, failed to invoke the jurisdiction of the statutory probate court and that the judgments and orders challenged were entered in the complete absence of subject matter jurisdiction.

It is Appellants position that the only jurisdiction Harris County Statutory Probate Court No. 4 acquired over the 412249-401 matter at the time the independent executor filed his nonprobate tort action, was the jurisdiction to dismiss for want of subject matter jurisdiction and that all orders entered in the court are void ab initio for want or excess of jurisdiction.

A judgment is void only when it is apparent that the court rendering the judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court. Cook v. Cameron,[733 S.W.2d 137, 140](https://casetext.com/case/cook-v-cameron#p140) (Tex. 1987); Browning v. Placke,[698 S.W.2d 362, 362](https://casetext.com/case/browning-v-placke#p362) (Tex. 1985) Mapco Inc. v. Forrest, 795 S.W.2d 700, 703 (Tex. 1990)

## Controlling Facts

Decedents had pour-over wills with a family living trust as the sole devisee. Both wills called for Independent Administration by directing that no action shall be required in the probate court other than the recording of the wills and the return of an inventory, appraisement and list of claims as required by law.

The authority of the testator to limit the probate courts involvement in the disposition of the estate is supported by both case law and statute.

Tex. Est. Code § 402.001

When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court

Independent executor Carl Brunsting filed the inventory, appraisement and list of claims on March 27, 2013.[[1]](#footnote-1) The inventory, appraisement and list of claims were approved by the probate court[[2]](#footnote-2) and drop orders[[3]](#footnote-3) were issued on April 4, 2013. Independent[[4]](#footnote-4) executor Carl Brunsting filed his non-probate related tort claims in the probate court on April 9, 2013, five days after the inventory, appraisement and list of claims had been approved and drop orders issued. Because of the pour-over nature of the wills, all right title and interest in the estates claims poured into the trust in the instant the inventory was approved.

Thus, the first inquiry is whether the matter before the court constitutes a direct attack on a voidable judgment or a collateral attack on judgements void ab initio for want of subject matter jurisdiction in the court that entered the judgment. Because Appellant attacks the subject matter jurisdiction of the probate court from the instant in which the 412249-401 proceeding was filed and alleges that all of the orders and rulings entered in the 412249-401 proceeding are void ab initio for want of Statutory Probate court Jurisdiction, this appeal constitutes a collateral attack on a void judgment that cannot be time barred.

1. [2013-03-27 Case 412249 PBT-2013-99449 Inventory, appraisement and list of claims.pdf](http://www.probatemafia.com/Brunsting/Tab%2021%202013-03-27%20Case%20412249%20PBT-2013-99449%20Inventory,%20appraisement%20and%20list%20of%20claims.pdf) [↑](#footnote-ref-1)
2. [2013-04-05 ORDER approving INVENTORY APPRAISEMENT AND LIST OF CLAIMS.pdf](http://www.probatemafia.com/Brunsting/2013-04-05%20ORDER%20approving%20INVENTORY%20APPRAISEMENT%20AND%20LIST%20OF%20CLAIMS.pdf) [↑](#footnote-ref-2)
3. [2013-04-04 Certified Drop Order in 412249.pdf](http://www.probatemafia.com/Brunsting/Tab%2023%202013-04-04%20Certified%20Drop%20Order%20in%20412249.pdf) [↑](#footnote-ref-3)
4. [Carl's Original April 9, 2013 Petition 412249-401 PBT-2013-115617\_Certified.pdf](http://www.probatemafia.com/Brunsting/Tab%2025%20Carl's%20Original%20April%209,%202013%20Petition%20412249-401%20PBT-2013-115617_Certified.pdf) [↑](#footnote-ref-4)