In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-25-00218-CV

IN RE ESTATE OF STACY LYNN FUCHSMAN, DECEASED

On Appeal from Probate Court No. 1
Denton County, Texas
Trial Court No. PR-2022-00863-A

Before Kerr, Birdwell and Wallach, JJ.
Opinion by Justice Birdwell

OPINION

Appointed to act as the Dependent Administrator for the Estate of Stacy Lynn Fuchsman, Deceased, Appellant David M. Pyke sought the probate court's approval and award of a five percent statutory commission on qualifying cash disbursements and receipts, including the net cash proceeds received from the sales of two residential properties comprising almost the entirety of the corpus of the Estate. *See* Tex. Est. Code § 352.002(a). Finding that the proposed commission would be unjust and unreasonable because the Estate had already paid sales commissions of five percent to real estate agents or brokers to sell these residential properties, *see id.* § 352.004, the probate court awarded Pyke a commission solely on qualifying cash disbursements; the court awarded no commission whatsoever on any qualifying cash receipts, including the net cash proceeds from the sales of these properties. The probate court thereafter entered an order (1) approving Pyke's final account of the Estate, (2) authorizing payment of an administrator's commission on qualifying cash disbursements only, (3) authorizing payment of attorney's fees and expenses to Pyke and another law firm, and (4) ordering disbursement to the decedent's heirs of all funds remaining in the Estate after such payments. Because we hold that, as a matter of law, the probate court abused its discretion by denying Pyke any commission on qualifying cash receipts due to the payment of real estate agent or brokerage commissions on the sales of the real property owned by the Estate, we reverse and render judgment awarding the statutory commission Pyke sought on all qualifying cash receipts.

I. Background

Fuchsman died intestate on June 3, 2021. In June 2022, Appellee Alexis Wahlen filed for a determination of heirs, an independent administration, and for letters of administration, claiming to be the owner of all or part of her aunt's estate and identifying herself, her brother Hunter Wahlen, and her sister Appellee Sabrina Wahlen as their aunt's only heirs.[1] As part of the corpus of the Estate, the application identified two

[1]For the sake of clarity, we will refer to the Wahlens by their given names. Alexis and Sabrina are nominal appellees due to their status as heirs, but they neither objected in the probate court to the commission sought by Pyke nor filed responsive briefs in opposition to his appeal.

As will be discussed in more detail below, Hunter passed away during Pyke's administration of the Estate, but Hunter's father, Paul Wahlen, filed an objection to Pyke's commission identifying himself as the dependent administrator of his son's estate. Nevertheless, Paul has not filed a responsive brief in opposition to Pyke's appeal, but that omission may be because, according to the order approving Pyke's final account of his administration, the probate court ordered that a one-third share of the remaining funds in the Estate be disbursed *by* Pyke, as the Dependent Administrator of the Estate of Stacy Lynn Fuchsman, *to* Pyke, as the Dependent Administrator of the Estate of Hunter Thomas Wahlen, thereby leaving Pyke in the apparently conflicting positions of both appellant and appellee on the merits of this appeal. *See Pine v. Deblieux*, 405 S.W.3d 140, 142 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (observing successor administrator who filed motion for summary judgment seeking declaration that certain assets of her father's estate were not subject to administration demonstrated potential conflict by failing to respond to her own motion on behalf of the estate).

Although we normally may accept as true all factual assertions in an appellant's brief that remain unchallenged by an appellee, due to Pyke's dual standing as both appellant and appellee, we will assume each factual statement in his appellant's brief is contested. *Cf. Lorant v. 2016 Parkview Condos. Dev. LLC*, No. 02-22-00032-CV, 2022 WL 16845110, at *3 n.8 (Tex. App.—Fort Worth Nov. 10, 2022, no pet.) (citing *Rancher v. Franks*, 269 S.W.2d 926, 927–28 (Tex. App.—Fort Worth 1954, no writ) ("In her brief appellant says that appellees filed no motion for judgment non obstante veredicto. Since pieces of real property—one in Carrollton, Texas, and one in Plano, Texas—and estimated their value at $335,900.00 and $369,200.00, respectively. The Carrollton property was a rental property, and the Plano property was the decedent's personal residence. Alexis represented that Hunter and Sabrina agreed that there was a need for an independent administration of their aunt's estate and that she should be appointed the independent administrator. Hunter and Sabrina subsequently filed formal appearances confirming their agreement to the proposed administration and appointment.

In June 2023, Alexis filed her First Amended Application seeking the appointment of Pyke as the dependent administrator for her aunt's estate. Hunter and Sabrina contemporaneously confirmed their agreement with Pyke's proposed appointment. The amended application made no changes to the estimated valuations of the Carrollton and Plano properties.

On August 9, 2023, the probate court entered its Judgment Declaring Heirship, declaring Alexis, Hunter, and Sabrina as Fuchsman's sole heirs and awarding each one-third shares in the real and personal property of the Estate. The same day, the court entered an order granting the requested dependent administration, appointing Pyke as the Estate's dependent administrator and, upon the taking and filing of his oath and approval of his $400,000.00 bond, issuing him letters of dependent administration.

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that statement is unchallenged, this Court is not required to look to the record but may accept appellant's statements as true.")).

Critically, the order further expressly forbade Pyke from selling or disposing of estate assets "without the authorization and approval of the Court which, if granted, will be authorized by a separate written order of this Court." Pyke thereafter filed the required oath and bond.[2]

In December 2023, Pyke filed an Inventory, Appraisement, and List of Claims in the probate court that appraised the Carrollton and Plano properties at $265,000.00 and $390,268.00, respectively, representing virtually one hundred percent of the value of the corpus of the Estate. The probate court approved the filing.

In April 2024, Pyke filed applications with the probate court for authority to sell the Carrollton and Plano properties by listing them through a licensed real estate broker. The appraisals he filed with the applications valued the properties at $310,000.00 and $380,000.00, respectively. The next month, the probate court entered orders authorizing the sale of the properties, including approval of "a realtor's commission rate not to exceed a total of 5%."

In July 2024, Pyke filed a report proposing the sale of the Carrollton property for $265,000.00 in cash, attaching for the probate court's approval the proposed contract for sale and seller's settlement statement. The seller's settlement statement included a five percent commission for the listing agent of $13,250.00. The probate court thereafter entered a decree approving and confirming the sale of the Carrollton

[2]Pyke subsequently filed a new bond in the amount of $520,000.00 to cover an anticipated increase in the value of the Estate due to the sale of the Plano property.

property as reported, finding that the sale was in the best interest of the Estate. *See id.* § 356.556(a) (authorizing approval of proposed sale of real property if proposed sale is "for a fair price, properly made, and in conformity with law").

In September 2024, Pyke filed his First Annual Account documenting his activities as dependent administrator. The accounting confirmed the sale of the Carrollton property for $265,050.00,[3] the probate court's approval thereof, including the payment of a five percent commission ($13,250.00) to the real estate agent who brokered the sale, and net cash proceeds from the sale—after payment of the commission, taxes, and title and closing costs—of $223,416.47. Pyke also notified the probate court that he would be seeking a statutory administrator's commission on the net cash proceeds by separate filing.

Contemporaneously with the First Annual Account filing, Pyke filed an application for an administrator's commission pursuant to Section 352.002(a) of the Texas Estates Code. He sought a five percent commission on all cash received and paid out during the annual accounting period for a total commission of $12,298.13. This amount included, among other receipts and disbursements, a five percent commission on the net cash proceeds received from the sale of the Carrollton property ($223,416.47 x .05 = $11,170.82). In support of the total commission sought, Pyke recounted the

[3]The $50.00 difference between the report proposing the sale of the Carrollton property for $265,000.00 and the accounting confirming the property's sale for $265,050.00 is a "Non-Refundable Option Fee (retained by Seller)."

valuable administration services he had provided to the Estate during the accounting period.

On November 5, 2024, the probate court entered an order approving Pyke's First Annual Account and, having audited the accounting, finding it in compliance "with the law in every respect." Later that month, Pyke filed a report proposing the sale of the Plano property for $315,000.00[4] in cash, attaching for the probate court's approval the proposed contract for sale and seller's settlement statement. The seller's settlement statement included a three percent commission for the listing agent of $9,600.00 and a two percent commission for the selling agent of $6,400.00—representing a five percent overall sales commission of $16,000.00. After deducting these commissions, taxes, title and closing costs, and certain homeowners' association (HOA) fees, the net cash proceeds to the Estate on the seller's settlement statement amounted to $254,010.04. On November 25, 2024, the probate court entered a decree approving and confirming the sale of the Plano property as proposed, finding that the sale was in the best interest of the Estate.

The very same day, the probate court entered an order denying the five percent administrator's commission sought by Pyke on the net cash proceeds from the sale of the Carrollton property, finding that "the administrator [had already] paid a five percent

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[4]Pyke's Report of Sale of Real Property concerning the Plano property states that "[t]he sales price of the Property to be sold is $320,000.00, but a seller's concession of $5,000 makes the effective purchase price $315,000."

commission to a realtor acting as an agent of the estate for the sale of the subject real property." The court's order did not, however, address the commission sought on all other cash receipts and disbursements during the first annual accounting period, nor did it reference any objection from Alexis, Hunter, or Sabrina.

In January 2025, after the sale of the Plano property, Pyke filed an amended report and seller's settlement statement of the sale explaining that, due to an administrative error by the title agent, the seller's settlement statement had not included a payoff amount for outstanding fees owed to the HOA in the amount of $17,309.00, which had been paid by Pyke out of the cash proceeds received by the Estate, reducing the projected net recovery from the transaction from $250,010.04 to $236,810.82. As a result, Pyke sought the probate court's approval of the HOA payment as an expense of the Estate. Shortly thereafter, the court entered an order approving and authorizing the HOA payment.

On February 21, 2025, Pyke filed his Final Account for his administration of the Estate. The accounting confirmed the sale of the Plano property, including the receipt of $254,119.82 in "net proceeds received," and the subsequent payment of the $17.309.00 outstanding HOA fees as a cash disbursement. With no outstanding debts or taxes to be paid and absent any remaining property in the Estate's corpus, Pyke reported the total value of the Estate on final accounting to be $469,326.60 in cash on hand.

On the same day he filed his Final Account, Pyke filed an application for an administrator's commission (1) asking the probate court to reconsider its denial of his previous application for $12,298.13; (2) seeking a five percent commission on the net cash proceeds received from the sale of the Plano property in the amount of $12,705.99; and (3) requesting a five percent commission on the net disbursements made during the final accounting period in the amount of $1,105.43, for a total administrator's commission of $26,109.55. Given that this amount did not exceed, in the aggregate, five percent of the gross fair market value of the Estate ($657,728.00 x .05 = $32,866.40), Pyke observed that the total commission sought did not violate the cap on commissions imposed by Section 352.002(b)(1). *See id.* § 352.002(b)(1).

Pyke also argued that the probate court's denial of the statutory commission on the net cash proceeds from the sales of the Carrollton and Plano properties due to the payment of realtor's commissions approved by the court was a misinterpretation or misapplication of Section 352.002(a), which does not grant the courts such discretion. And alternatively, Pyke argued that, even if the court's interpretation of the code was correct, his efforts on behalf of the Estate warranted a commission more than the statutory cap.

On March 4, 2025, Hunter's father, Paul, identifying himself as the Dependent Administrator of the Estate of Hunter Thomas Wahlen,[5] filed an objection to Pyke's

[5]Although Paul had previously sought reimbursement from the Estate for the expense of retaining the services of a forensic genealogist, this is the first indication that

application for an administrator's commission urging the probate court to deny the requested commission on the proceeds from the sales of the Carrollton and Plano properties because the commission request, in addition to the realtor's commissions already paid, was unreasonable. Ten days later, Pyke, also identifying himself as the Dependent Administrator of the Estate of Hunter Thomas Wahlen, filed a Waiver of Service for the Account for Final Settlement he had filed as the Dependent Administrator for the Estate of Stacy Lynn Fuchsman.

The probate court conducted a hearing on the Final Account and Pyke's application for an administrator's commission on April 7, 2025. During the hearing, Pyke urged the probate court to reconsider its previous ruling that disallowed any award of a statutory commission because he had hired a realtor to sell the properties, arguing that nothing in the language of the statute provided the court with the discretion to disallow the commission and that in doing so in this instance "virtually the entire statutory calculation would be eliminated." He also observed that the heirs had expressly requested that he hire a realtor and noted that having access to list the properties "on MLS" required hiring a realtor.[6] Pyke further testified that certain

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Hunter had died. There is no suggestion of death in the record reflecting when Hunter died, however, or any documentation demonstrating Paul's appointment as the dependent administrator of his son's estate.

[6]"MLS stands for 'Multiple Listing Service,' a tool to facilitate real estate transactions nationwide developed and maintained by real estate professionals." *Harris Cnty. Appraisal Dist. v. Integrity Title Co.*, 483 S.W.3d 62, 65 n.1 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (citing Nat'l Ass'n of Realtors, *Multiple Listing Service (MLS):*

difficult aspects of his administration would go uncompensated by disallowing the commission he sought:

> This estate consisted of some cash that I had to endeavor to locate, personal property of very little value other than a vehicle. The houses had to be cleaned out and prepared to sell, exhaustive search through business records at the house that were in no organized format whatsoever, dealing with tax issues, seeking information from the IRS to find bank accounts, and then selling the two pieces of real property which were far and away the gross value of the estate. So if those were deducted -- if the proceeds of those sales were deducted, the commission would be significantly unfair to me and not represent fair compensation for an estate where there's been no allegation that I've mishandled the estate in any way.

In response, counsel for Paul did not contest Pyke's representation that the heirs had requested a realtor to facilitate the sales of the properties and expressly stated that neither she nor her client was asserting any allegation of mismanagement of the Estate by Pyke; indeed, counsel thanked Pyke for "all of his work" in the case.[7] Instead,

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What Is It, http://www.realtor.org/topics/nar-doj-settlement/multiple-listing-service-mls-what-is-it (last visited July 27, 2026)); *see Tucker v. Bedgood*, No. 13-16-00433-CV, 2016 WL 7011584, at *5 n.4 (Tex. App.—Corpus Christi–Edinburg Dec. 1, 2016, no pet.) (describing a Multiple Listing Service (MLS) as "a service used by realtors . . . to facilitate real estate transactions and publicly document the details of those transactions"), *disapproved on other grounds by Agar Corp. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136 (Tex. 2019); *Pleasant v. Bradford*, 260 S.W.3d 546, 550 (Tex. App.—Austin 2008, pet. denied) ("An MLS listing contains a variety of information about a house and notifies fellow realtors that the house is for sale."); *Newman v. McClure*, 459 S.W.2d 703, 704 (Tex. App.—Fort Worth 1970, no writ) (describing MLS as an organization of local realtors entitling members "to render broker services upon property under otherwise exclusive listings of fellow members").

[7]Counsel even extended her appreciation and gratitude to Pyke's dependent administration of Hunter's estate, confirming that Pyke had already been so appointed by the time of this hearing.

counsel argued that she agreed with the probate court's earlier ruling disallowing the statutory commission Pyke sought in his annual account after the sale of the Carrollton property, suggesting that other statutory probate courts "around the state" similarly disallowed such commissions when the sale of real property included the payment of a realtor's commission by an estate. Counsel conceded that she did not think Pyke "should not be compensated for his work" but simply thought the payment of a "double commission" on the sales of the Carrollton and Plano properties was not proper.

The probate court thereafter clarified the distinct amounts paid for realtor commissions, for attorney's fees and legal expenses incurred during the first annual reporting period, and for an administrator's commission on cash disbursements—although Pyke informed the court that the latter had not yet been paid. The probate court also recalled its reasoning from the first hearing on Pyke's original application in which it had declined to authorize the commission sought because "professional fees [had already been] paid out" on the Carrollton property transaction and the court's standard permitted only one commission paid per transaction.

When the probate court inquired whether any other jurisdiction awarded both realtor's and administrator's commissions on the same transaction, Pyke indicated that probate courts in Dallas County and Ellis County had done so. Pyke also clarified that the administrator's commission he sought was distinct and separate from the attorney's fees and legal expenses he requested as well as from the brokerage commissions paid to the realtors:

> The reason I would quibble with how your Honor worded the issue, I don't seek commission on a transaction. I seek commission as an administrator. The reason I don't think -- that that's an important distinction is there are all sorts of activities that an administrator does that are not compensable by the statutory calculation. For example, the fact that I had to search in this case for a bank account, finally find a bank account, and go sit in the office of the bank for hours to get control of that bank account is not a commissionable activity per the statute. Retrieving a bank account is not commissionable activity. There's all sorts of activities like that. Tax compliance. Other than writing the check itself is not commissionable activities. So whether it is -- It's not just related to the transaction. It is all of your services are compensated what could be considered an arbitrary formula, but it is the formula the statute gives us. And I think it's important that the statute caps compensation so that that's not abused. It cannot be more than five percent of the gross value of the estate. So that's, I think, the check on compensation being fair. Thank you for the opportunity to clarify.

Nevertheless, the probate court held that adding the realtor's and administrator's commissions together constituted a ten percent commission on the sales of the properties, depleting the Estate of approximately $53,000.00 in violation of the statute.

On April 8, 2025, the probate court entered an order granting Pyke's application for administrator's commission in part and denying it in part. In its order, the court expressly found that Pyke had "taken care of and managed the Estate in compliance with the standards set forth in the Texas Estates Code." Nevertheless, the court found good cause to sustain the objection of Paul—whom the court expressly recognized as the dependent administrator of Hunter's estate—and found that the requested amount of $26,209.55[8] was "unreasonable and unjust." Observing that it had previously denied Pyke a statutory commission on the sale of the Carrollton property due to the payment of a five percent realtor's commission on that transaction, the probate court denied Pyke a statutory commission on the sale of the Plano property for the same reason—finding that allowing such commission in addition to the five percent realtor's commissions on these transactions "would result in total commissions paid on each transaction to be in excess of five percent (>5%)" and citing Section 352.002(b)(1) of the Estates Code for authority. Instead, the court approved and awarded Pyke an administrator's commission of $2,027.74 solely on "actual disbursements" subject to commission, leaving cash receipts other than the real estate transactions—for example, for the sale of the decedent's car—completely uncompensated.

The probate court subsequently entered an order approving the final account of the Estate. In the order, the court ordered the payment of (1) $2,027.74 for the statutory commission on cash disbursements it had previously awarded to Pyke, (2) $5,713.27 in attorney's fees and expenses for legal services provided by Pyke to the Estate separate and distinct from his administration,[9] and (3) $7,994.81 in attorney's fees and expenses

[8]This amount appears to be a typographical error in the trial court's order, as Pyke had requested a total administrator's commission of $26,109.55.

[9]At the beginning of his administration, Pyke filed a notice with the probate court that, as a licensed attorney who anticipated providing legal services to the Estate in addition to his services as administrator, he intended to seek dual compensation as both attorney and administrator. Pyke then sought attorney's fees and expenses in the amount of $12,794.21 during the first annual reporting period, which the court reduced

for legal services provided by another law firm to Alexis.[10] Conditioned upon payment of these amounts, the probate court ordered the disbursement of the balance of the corpus of the Estate—all cash—in equal thirds to Alexis, Sabrina, and Pyke, now expressly identified by the court as the Dependent Administrator of the Estate of Hunter Wahlen, Deceased. Upon this final distribution to the heirs, the court ordered Pyke to file a Report of Compliance and Application to Close and Discharge the Administrator.

Pyke timely filed a notice of appeal expressly complaining of the probate court's April 8, 2025 order granting in part and denying in part his application for an administrator's commission and contending that this was a final judgment "as no further orders granting or denying commissions will be entered."

II. Jurisdiction

"At the outset, we take up a question of jurisdiction, because we must consider our jurisdiction sua sponte when it seems in doubt." *In re Est. of Banta*, No. 02-21-00327-CV, 2022 WL 2526940, at *1 (Tex. App.—Fort Worth July 7, 2022, pet. denied).

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to an award of $10,451.71. Pyke subsequently sought $6,288.27 in attorney's fees and legal expenses for the final accounting period, which the probate court reduced to an award of $5,713.27. In seeking an administrator's commission for the first annual and final accounting periods, Pyke explained how his legal fees and commission represented separate forms of compensation for distinct services provided.

[10]This amount represents the full amount of attorney's fees and legal expenses sought by Alexis, who retained another law firm to represent the heirs before and during the administration. The probate court awarded the amount without reduction.

"'Courts are empowered to note potential jurisdictional defects sua sponte,' and by doing so, a court 'discharges its duty to ensure that the court itself is functioning in an authorized and properly judicial capacity.'" *Hidalgo Cnty. Water Improvement Dist. No. 3 v. Hidalgo Cnty. Irrigation Dist. No. 1*, 669 S.W.3d 178, 185 (Tex. 2023) (quoting *Rattray v. City of Brownsville*, 662 S.W.3d 860, 867, 869 (Tex. 2023)). Stated differently, we are obligated to examine and resolve any question that arises concerning our jurisdictional authority to address and determine the merits of an appeal even when the parties to the appeal neither perceive its absence nor challenge its existence. *See Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 774 (Tex. 2020); *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004); *Eagle Gun Range, Inc. v. Bancalari*, 495 S.W.3d 887, 889 (Tex. App.—Fort Worth 2016, no pet.) ("We are required to review *sua sponte* jurisdictional issues."); *St. Louis Sw. Ry. v. Elliston*, 128 S.W. 675, 675 (Tex. App.—Fort Worth 1910, no writ) ("The court will of its own motion notice this fact of its want of jurisdiction.").

By way of his notice of appeal, Pyke asserted that the order made the subject of his appeal was the order the probate court entered granting in part and denying in part his application for administrator's commission. After we sent a letter to Pyke questioning the finality and appealability of that order, *see* Tex. R. App. P. 42.3(a) (authorizing courts of appeals to dismiss for lack of jurisdiction sua sponte after providing the parties with ten days' notice), he timely filed an amended notice of appeal adding the probate court's order approving his final account—which incorporated the essential elements of the commission order—as the subject of his appeal and arguing that these orders, viewed together, should be analogized to orders granting or denying requests for attorney's fees that have been held to be final and appealable. *See In re Est. of Harris*, No. 02-19-00333-CV, 2021 WL 832721, at *4 (Tex. App.—Fort Worth Mar. 4, 2021, pet. denied) (holding that an order awarding attorney ad litem fees or terminating attorney ad litem's representation "concludes a discrete phase of the probate proceeding" and is subject to appeal); *Wittner v. Scanlan*, 959 S.W.2d 640, 642 (Tex. App.—Houston [1st Dist.] 1995, writ denied) ("[W]e hold that the order awarding attorney's fees to [the administrator of the decedent's estate] is final for the purposes of appeal.").

But we have previously held that we lack jurisdiction to hear an appeal from an order approving an account for final settlement, interpreting the order as merely an intermediate step toward closing the estate and not a final, appealable order. *In re Est. of Froehle*, No. 02-18-00003-CV, 2018 WL 2440388, at *1 (Tex. App.—Fort Worth May 31, 2018, no pet.) (first citing *In re Est. of Scott*, 364 S.W.3d 926, 927–28 (Tex. App.—Dallas 2012, no pet.) (concluding that order approving account for final settlement that authorized distribution of the estate pursuant to a determination of heirship and that specified additional steps necessary to close the estate—including the filing of proper receipts and an application for discharge of the administrator and closure of the estate—was not final and appealable); then citing *Bozeman v. Kornblit*, 232 S.W.3d 261, 264 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (determining that order approving account for final settlement and specifying additional steps for closing the estate—such as payment of attorney's fees awarded by a separate order, delivery of property and funds to the heirs according to a prior judgment of heirship, and filing an application to close the estate—was not final and appealable); then citing *In re Est. of Aguilar*, No. 04-16-00250-CV, 2016 WL 3944817, at *1 (Tex. App.—San Antonio July 20, 2016, no pet.) (concluding that order approving final account was not final and appealable but dismissing appeal for want of jurisdiction upon appellants' motion); and then citing *In re Est. of Waddell*, No. 13-13-00202-CV, 2013 WL 1932173, at *1 (Tex. App.—Corpus Christi–Edinburg May 9, 2013, no pet.) (holding that order approving annual account and authorizing expenditures was not final and appealable)). *But see Jarvis v. Feild*, 327 S.W.3d 918, 930–32 (Tex. App.—Corpus Christi–Edinburg 2010, no pet.) (addressing "Order Approving Account for Final Settlement"—an order regarding both asset valuation and final distribution to heirs of estate—as final and appealable). Given the addition of the order approving Pyke's final account as a subject of his amended notice of appeal, we sent a second letter to him questioning our jurisdiction considering *Estate of Froehle*.

Pyke responded with additional briefing expounding on the authorities he previously cited and distinguishing the factual circumstances present in *Estate of Froehle* from those here because, unlike in *Estate of Froehle*, Pyke's final account was found by the probate court's order, after audit, to comply with the law, leaving only the distribution of the remaining assets of the Estate to the heirs, after which Pyke was to file a report confirming such distribution and a motion seeking discharge as the dependent administrator and the closing of his administration. Based on this briefing, we opted to carry the question of our jurisdiction with the case and ordered the parties to include in their merits briefs arguments and authorities addressing the question.[11]

"The general rule, with a few mostly statutory exceptions, is that an appeal may be taken only from a final judgment." *In re Est. of Tacke*, No. 02-14-00400-CV, 2015 WL 1543912, at *2 (Tex. App.—Fort Worth Apr. 2, 2015, no pet.) (citing *Lehmann v. Har–Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001)). A judgment is not ordinarily final for purposes of appeal unless the judgment disposes of all pending parties and claims in the record. *Id.* One of the statutory exceptions to this general rule, however, exists in probate cases. Tex. Est. Code § 32.001(c) ("A final order issued by a probate court is appealable to the court of appeals."); *see In re Est. of Wheatfall*, 729 S.W.3d 788, 790–91 (Tex. 2026); *De Ayala v. Mackie*, 193 S.W.3d 575, 578 (Tex. 2006) (op. on reh'g); *Crowson v. Wakeham*, 897 S.W.2d 779, 781 (Tex. 1995). In probate proceedings, "multiple judgments final for purposes of appeal can be rendered on certain discrete issues." *De Ayala*, 193 S.W.3d at 578; *In re Est. of Heffner*, No. 02-21-00419-CV, 2023 WL 3876760, at *2 (Tex. App.—Fort Worth June 8, 2023, pet. denied).

[11]When Pyke filed his appellant's brief, he did not provide the additional briefing requested. Nor did he file any responsive appellee's brief as the dependent administrator of Hunter's estate, let alone any briefing in opposition to our jurisdiction. By correspondence, Alexis declined to file a responsive brief to avoid additional legal fees. Sabrina simply did not respond.

"A probate proceeding consists of a continuing series of events, in which the probate court may make decisions at various points in the administration of the estate on which later decisions will be based." *Logan v. McDaniel*, 21 S.W.3d 683, 688 (Tex. App.—Austin 2000, pet. denied); *see Christensen v. Harkins*, 740 S.W.2d 69, 74 (Tex. App.—Fort Worth 1987, order) ("The nature of 'administration' contemplates decisions to be made on which other decisions will be based."). As a result, "[t]he need to review controlling, intermediate decisions before an error can harm later phases of the proceeding justifies modifying the one[-]final[-]judgment rule with respect to probate cases." *Tacke*, 2015 WL 1543912, at *2 (citing *Logan*, 21 S.W.3d at 688); *see In re Est. of Romo*, 469 S.W.3d 260, 262 (Tex. App.—El Paso 2015, no pet.) (same); *Spies v. Milner*, 928 S.W.2d 317, 318–19 (Tex. App.—Fort Worth 1996, no writ) (quoting *Christensen*, 740 S.W.2d at 74 ("There must be a practical way to review erroneous, controlling, intermediate decisions before the consequences of the error do irreparable injury.")).

To determine whether an order is final and appealable under Section 32.001(c), the Supreme Court of Texas has promulgated the following test:

> If there is an express statute . . . declaring the phase of the probate proceedings to be final and appealable, that statute controls. Otherwise, if there is a proceeding of which the order in question may logically be considered a part, but one or more pleadings also part of that proceeding raise issues or parties not disposed of, then the probate order is interlocutory.

Crowson, 897 S.W.2d at 783; *see Wheatfall*, 729 S.W.3d at 791 (reaffirming the *Crowson* test for finality in probate proceedings); *De Ayala*, 193 S.W.3d at 578 (same); *In re Est. of Turnbow*, No. 02-20-00243-CV, 2021 WL 4898663, at *2 (Tex. App.—Fort Worth Oct. 21, 2021, no pet.) (same). "An order that merely sets the stage for the resolution of proceedings is interlocutory and not appealable." *Tacke*, 2015 WL 1543912, at *3 (citing *De Ayala*, 193 S.W.3d at 579).

"To apply either part of the *Crowson* test, we must first identify the phase of the probate proceeding at issue." *In re Est. of Wilson*, No. 02-06-00075-CV, 2006 WL 2986566, at *2 (Tex. App.—Fort Worth Oct. 19, 2006, no pet.); *see In re Est. of Lynch*, No. 07-26-00054-CV, 2026 WL 916625, at *2 (Tex. App.—Amarillo Mar. 31, 2026, no pet.) ("Applying that framework requires identification of the relevant phase of the probate proceeding."). Unfortunately, "evaluating what constitutes a 'particular phase' of a probate proceeding is less straightforward than it appears." *Wheatfall*, 729 S.W.3d at 791. But because the *Crowson* test does not limit the term "phase" to the completion of a mere timeframe or stage of a probate proceeding and clearly contemplates a substantive component, we must look not only to when the challenged ruling or order occurred during the probate proceeding but also to its substantive nature, i.e., whether future rulings and orders necessarily rely on its correct determination. *See Tacke*, 2015 WL 1543912, at *2 (observing probate exception to one-final-judgment rule permits appellate review and correction to avoid irreparable harm of mistaken ruling later in proceedings); *Logan*, 21 S.W.3d at 688 (same); *Spies*, 928 S.W.2d at 318–19 (same);

Christensen, 740 S.W.2d at 74 (same). With this understanding, a controlling, intermediate decision concerning what compensation should be awarded to an executor or administrator for the administration of a decedent's estate, if any, appears to constitute a discrete or particular phase of probate proceedings subject to appeal pursuant to Section 32.001(c). *See Lynch*, 2026 WL 916625, at *2 (concluding determination of executor's compensation is discrete phase of probate proceeding when coupled with executor's removal for maladministration); *see also Harris*, 2021 WL 832721, at *4 (concluding determination of attorney ad litem's compensation is discrete phase of probate proceeding when coupled with termination of ad litem's representation).

Section 352.002(a) authorizes a five percent commission to executors and administrators as compensation for their administration of an estate:

> An executor, administrator, or temporary administrator a court finds to have taken care of and managed an estate in compliance with the standards of this title is entitled to receive a five percent commission on all amounts that the executor or administrator actually receives or pays out in cash in the administration of the estate.

Tex. Est. Code § 352.002(a). "The commission . . . may not exceed, in the aggregate, more than five percent of the gross fair market value of the estate subject to administration[.]" *Id.* § 352.002(b)(1).

> A commission is not allowed, however, for
>
> (A) receiving funds belonging to the testator or intestate that were, at the time of the testator's or intestate's death, either on hand or held for the testator or intestate in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account;

(B) collecting the proceeds of a life insurance policy; or

(C) paying out cash to an heir or legatee in that person's capacity as an heir or legatee.

Id. § 352.002(b)(2); *see Terrill v. Terrill*, 189 S.W.2d 877, 878 (Tex. App.—San Antonio 1945, writ ref'd) (disallowing five percent commission on receipt of $600 in cash for redemption of USPS Savings Stamps of same face value because stamps constituted cash on hand at the time of decedent's death).

Finally, Section 352.004 authorizes the probate court to "wholly or partly deny a commission" on the application of an interested person or on the court's own motion if "(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or (2) the executor or administrator has been removed under Section 404.003 or Subchapter B, Chapter 361 [for, among other things, misapplying or embezzling estate property, or in anticipation thereof]." Tex. Est. Code § 352.004. "Unless there is an objection filed to the fee application, the court will normally approve the calculated fee as long as the calculation does not include prohibited items." M. Keith Branyon, *Texas Probate Forms & Procedures* § 4:30, at 4–9 (12th rev. 2025).

Critically, there is no statutory timeframe or deadline for applying for or awarding an administrator's commission, nor does the Estates Code expressly authorize an appeal from a probate court's award, reduction, or denial of a commission. *See Lynch*, 2026 WL 916625, at *2. Thus, we must consider the substantive nature of the orders in question to determine whether they resolve a discrete issue, in its entirety and as to all parties, the erroneous resolution of which will create irreparable harm later in the proceeding. *See Wheatfall*, 729 S.W.3d at 791; *Tacke*, 2015 WL 1543912, at *2.

Because an award of an administrator's commission requires (1) a predicate finding that the personal representative of the estate has administered the estate in a manner consistent with the standards imposed by the Estates Code, *see* Tex. Est. Code § 352.002(a), and (2) a determination of the amount of compensation to award, if any, to be charged against the corpus of the estate *before* its final distribution to the heirs or legatees, *see id.* § 362.011(a), the award, reduction, or denial of a commission is a controlling, intermediate decision that resolves a particular or discrete phase of probate proceedings. *See Tacke*, 2015 WL 1543912, at *2. Stated differently, before awarding an administrator's commission to an executor or administrator, the probate court must find that the cash receipts and disbursements made the basis of the commission calculation occurred during an administration untainted by mismanagement or maladministration—intentional or otherwise—and must do so *before* ordering the distribution of the corpus of the estate to the heirs or legatees upon final accounting. *Cf. In re Scherer's Est.*, 136 P.2d 103, 107 (Cal. Dist. Ct. App. 1943) (op. on reh'g) ("Manifestly, the court must determine what is left in the estate to distribute before it can order distribution, and until the amount of executor's fees are definitely and finally determined, the order of distribution can[]not be made.").

And if the probate court errs by reducing or denying a properly earned commission, the harm is irreparable absent interlocutory appeal because the corpus of the estate will otherwise be lost to final distributions and no longer available to satisfy the appropriate award. By conditioning an administrator's commission upon the propriety of his administration and the availability of assets to satisfy an award, Section 352.002(a) clearly contemplates that a ruling on any challenge to an award should be made at a time when the probate court can assure both the representative's proper handling of the administration and the availability of assets to satisfy an award, thereby satisfying the *Crowson* test for finality and appealability. *See Wheatfall*, 729 S.W.3d at 792 (looking to the language of the order and, if equivocal, to the record "to see if the order actually disposes of all parties and issues in the phase of the probate proceedings at issue").

Here, the probate court entered an order granting Pyke's application for administrator's commission in part and denying it in part. The order expressly found that Pyke had "taken care of and managed the Estate in compliance with the standards set forth in the Texas Estates Code." Nevertheless, the probate court found good cause to deny Pyke the $26,109.55 he requested as "unreasonable and unjust." Instead, the court reduced its award to $2,027.74, calculated solely on "actual disbursements" subject to commission, leaving cash receipts other than the real estate transactions completely uncompensated. The court thereafter entered an order approving Pyke's final account of the Estate, including a payment of the $2,027.74 statutory commission on cash disbursements it had previously awarded and disbursement of the balance of the corpus of the Estate—all cash—in equal thirds to Alexis, Sabrina, and Hunter's estate, conditioned expressly upon the payment of the commission. Thus, the probate court finally disposed of the issue of Pyke's compensation as against all parties, thereby concluding a discrete and particular phase of the proceeding subject to appeal pursuant to Section 32.001(c).

Finally, the confirmation of our jurisdiction in this matter is distinguishable from the circumstances addressed by *Estate of Froehle* and the authorities upon which it relied. *Estate of Froehle* did not expressly address an application for administrator's commission. 2018 WL 2440388, at *1 (holding probate court's "Order Approving Account for Final Settlement" neither final nor appealable because it specified "additional actions" to be accomplished to finally settle and close the estate, "including the payment of all claims, debts, and expenses; the distribution of estate property to Froehle after payment of all debts and expenses; the filing of proper receipts; and the administrator's filing an application for an order of discharge and for a declaration that the estate is closed"). Neither did *Estate of Scott*. 364 S.W.3d at 927–28 (holding probate court's order approving second amended final account neither final nor appealable because it contemplated further activity, "including (1) delivery of the property remaining in the estate after payment of debts to 'the persons named in the Determination of Heirship,' (2) the filing of proper receipts after the distribution of the estate, and (3) the filing of an application for discharge of the administrator and for a declaration that the estate is closed”). Nor did *Bozeman*. 232 S.W.3d at 264–65 (holding probate court’s “Order Approving Account for Final Settlement” neither final nor appealable because it specified “additional actions” to be accomplished to finally settle and close the estate including payment of attorney’s fees awarded under separate order, delivery of all property and funds to the heirs, and the filing of an application and order for closing the estate with appropriate proof of final distribution). And in none of these cases did the appellant argue that the executor or administrator had mismanaged or maladministered the estate—a controlling, intermediate predicate for the reduction or denial of an administrator’s commission.

In this case, the probate court ordered no additional actions; accordingly, we conclude that the probate court’s orders reducing and denying Pyke’s administrator’s commission are final and appealable and subject to our appellate review pursuant to Section 32.001(c). *See Huddleston v. Kempner*, 28 S.W. 936, 936–37 (Tex. 1894) (holding that dependent administrator was entitled to appeal, without bond, denial of statutory commission on sale of mortgaged real property concerning administrator’s entitlement to both cash received (amount bid) and cash paid out (amount bid minus five percent commission on cash received)); *Brown v. Walker’s Heirs*, 38 Tex. 109, 109–10 (1873) (affirming “order of the district court[that] refus[ed] to allow [administrator–creditor] the five per[]cent[] commission allowed to administrators by law for paying out money to creditors”); *Cooper v. Schwalbe*, 238 S.W.2d 581, 582–84 (Tex. App.—Waco 1951, writ ref’d) (treating order that approved administrator’s final account, allowed administrator's commission on net cash proceeds from sale of estate real property, and ordered distribution of remaining corpus of estate to decedent's heirs as final and appealable and holding cash paid to satisfy IRS tax lien against estate property not subject to commission); *Spofford v. Minor*, 36 S.W. 771, 771–72 (Tex. App.—Galveston 1896, writ ref'd) (treating as final and appealable an order that awarded five percent commission to Texas administrator on residual cash proceeds from sales of Texas land "paid over" to New York executors and trustees of decedent's estate, holding same to be an impermissible commission on a transfer of estate assets within the decedent's estate, and reversing and remanding for determination of whether Texas administrator was entitled to reasonable compensation for services apart from statutory commission).

III. Standard of Review

Our determination of whether the probate court erred by reducing and otherwise denying the statutory commission requested by Pyke turns on how we interpret the meaning of the provisions in the Estates Code authorizing its payment. We review questions of statutory construction de novo, with our primary objective being to give effect to the legislature's intent. *In re Est. of Allen*, 658 S.W.3d 772, 777 (Tex. App.—El Paso 2022, no pet.); *see Eastland v. Eastland*, 273 S.W.3d 815, 820 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (treating question of statutory construction of former Probate Code as presenting legal issues that appellate court reviews de novo.). In ascertaining the legislature's intent, we give statutory terms their plain and common meanings unless (1) such a construction would lead to an absurd result or (2) a contrary intention is apparent from the context. *See City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008); *Lipstreu v. Hagan*, 571 S.W.2d 36, 38 (Tex. App.—San Antonio 1978, writ ref'd n.r.e.) ("It is also generally held that statutes providing for compensation of the personal representative cannot be construed contrary to their plain and definite language.").

"Once we determine the [l]egislature's intent in enacting a provision, we apply an abuse of discretion standard to determine whether the trial court acted correctly in applying those provisions." *Allen*, 658 S.W.3d at 777; *see Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding) (stating that a trial court has no discretion to misinterpret the law nor to misapply the law to the facts). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze or apply the law correctly. *Allen*, 658 S.W.3d at 777 (citing *Walker*, 827 S.W.2d at 839–40). Stated differently, the question of whether a trial court abused its discretion is whether it acted "without reference to any guiding rules and principles." *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

More particularly, these abuse-of-discretion standards apply when a probate court denies, reduces, or otherwise disallows a statutory commission sought by an executor or administrator for the administration of an estate. *See Shirey v. Harris*, 288 S.W.2d 315, 318 (Tex. App.—Fort Worth 1956, no writ) (reviewing for an abuse of discretion a district court's revision of probate court's five percent statutory commission award to administrator on sale of real estate); *Pinkston v. Pinkston*, 288 S.W.2d 299, 305–06 (Tex. App.—Waco 1956, writ ref'd n.r.e.) (finding no abuse of discretion in probate court's refusal of statutory commission due to administrator's maladministration of estate); *Jones v. Gilliam*, 199 S.W. 694, 697 (Tex. App.—Amarillo 1917) (reviewing for an abuse of discretion probate court's refusal to allow administrator credit for brokers' commissions for negotiating real estate sales), *aff'd*, 212 S.W. 930 (Tex. 1919).

IV. Analysis

Pyke argues that the probate court erred in denying him a statutory commission on the cash proceeds received by the Estate for the sales of the Carrollton and Plano properties by misinterpreting Section 352.002 of the Estates Code to conflate the term "commission" to include commissions paid to real estate agents or brokers to facilitate the sale of real property and thereby to foreclose a "double commission" by awarding an administrator's commission on cash proceeds of a sale so facilitated. For the reasons set forth below, we agree.

A. The Republican Origins of the Administrator's Commission

At common law, executors and administrators were not entitled to compensation for their administration of a decedent's estate; almost every state, however, enacted statutes providing for "just and moderate remuneration" for their services. 2 J.G. Woerner, *A Treatise on the American Law of Administration* § 524, at 1267 (2d ed. 1899) ("The wisdom of these statutes is attested by the experience of more than a century, and recognized by the courts in numerous decisions, as well as by modern text-writers without notable exception."); *see Lipstreu*, 571 S.W.2d at 38 ("The common law doctrine that a personal representative of a decedent was not entitled to compensation for his services has been abrogated by most, if not all, American jurisdictions by statute."); James Schouler, *A Treatise on the Law of Executors and Administrators* § 545, at 638 (1883) ("American policy . . . binds the executor or administrator closely to the court in his official dealings; but renders the judicial proceedings as inexpensive as possible, and remunerates him for faithful services; holding him bound, in consequence, to fulfil his trust with a just sense of the legal obligations which it imposes.").

While a republic, Texas enacted a statute authorizing compensation for executors and administrators in the form of a five percent commission on cash receipts and disbursements, reenacting the same statutory commission upon becoming a state. *Compare* 1 George W. Paschal, *A Digest of the Laws of Texas* art. 1340, at 325 (5th ed. 1878) ("Executors and administrators shall be entitled to receive, and may retain in their hands, five per cent. upon the sums they may actually receive in cash; and the same upon all sums they may pay away, in cash, in the course of their administration."), *and* Oliver C. Hartley, *A Digest of the Laws of Texas* art. 1188, at 377 (1850) ("[E]xecutors and administrators shall be entitled to receive, and may retain in their hands, five per cent. upon the sums they may actually receive in cash; and the same upon all sums they may pay away, in cash, in the course of their administration."), *with* James Wilmer Dallam, *A Digest of the Laws of Texas*, *Administrator* § 2, at 16 (1845) ("Administrators are allowed five dollars for every hundred dollars expended, and the same for every hundred received, by them during their office[.]"), *and id.*, *Executors*, at 92–93 (referring to *Administrator* § 2, at 16, as stating the law applicable to executors). Over time, this statute has been repeatedly reenacted employing the same percentage formula.[12] *See* Ben G.

[12] *See Huddleston*, 28 S.W. at 937 ("Article 2190 positively allows to the administrator on all money actually received 5 per cent., and on all sums paid away the same per cent." (citing former Tex. Rev. Civ. Stat. art. 2190 (1879))); *Dwyer v. Kaltayer*, 5 S.W. 75, 80 (Tex. 1887) ("The executor was entitled to 5 per cent. upon the amount realized from the goods on hand when he took charge of the estate, and this was allowed him."); *Davenport v. Lawrence*, 19 Tex. 317, 319 (1857) (quoting former art. 1188, Hart. Dig.); *Smith v. Belding*, 237 S.W. 246, 246 (Tex. Comm'n App. 1922, judgm't adopted) ("Executors and administrators shall be entitled to receive and may retain in their hands 5 per cent. on all sums they may actually receive in cash, and the same per cent. on all sums they may pay away in cash in the course of their administration." (quoting former Tex. Rev. Civ. Stat. art. 3621 (1920))); *Beaty v. Bales*, 677 S.W.2d 750, 756 (Tex. App.—San Antonio 1984, writ ref'd n.r.e.) ("Executors and administrators shall be entitled to receive, and may retain in their hands, a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate[.]" (quoting former Tex. Prob. Code § 241(a) (1980))); *Shirey*, 288 S.W.2d at 317 ("By the provisions of Article 3689, administrators are entitled to receive five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay out in cash."); *Simpson v. Goggin*, 5 S.W.2d 610, 612 (Tex. App.—San Antonio 1928, writ ref'd) ("Executors and administrators shall be entitled to receive and may retain in their hands five per cent. on all sums they may actually receive in cash, and the same per cent. on all sums they may pay out in cash in the course of their administration." (quoting former Tex. Rev. Civ. Stat. art. 3689 (1925))); *Spofford*, 36 S.W. at 771 ("By the statute, administrators are allowed, as commissions, 5 per cent. 'on all sums they may actually receive in cash, and the same per cent. on all sums they may pay away in the course of their administration.'" (quoting former Tex. Rev. Civ. Stat. art. 2190 (1879))); *Claridge v. Lavenburg*, 26 S.W. 324, 325 (Tex. App.—San Antonio 1894, writ ref'd) ("Article 2190, Rev. St., provides that executors and administrators shall be entitled to receive and may retain in their hands five per cent. on all sums they may actually receive in cash, and the same per cent on all sums they may pay away in cash in the course of administration."); Woerner, *supra*, § 524, at 1268–69 & n.27 (citing former Tex. Rev. Civ. Stat. art. 2245 (1895) ("Executors and administrators shall be entitled to receive and may retain in their hands five per

Sewell & Paul W. Nimmons Jr., *The Executor's and Administrator's Statutory Compensation in Texas*, 3 St. Mary's L.J. 1, 2–3 (1971) (observing that "basic statute" has been around since 1876). Although these statutes have not always employed the term "commission" in their language, the compensation they authorized has consistently been referred to in that manner due to its percentage formula. *See Smith*, 237 S.W. at 246 (referring to the statutory compensation authorized by Article 3621 as "commissions" although that term was not found in the statute); *see also Commission*, Ballentine's Law Dictionary 223 (3d ed. 1969) ("[A] fee or compensation calculated on a percentage basis, particularly the compensation of a sales agent"); *Commission*, 2 Judicial and Statutory Definitions of Words and Phrases at 1303–04 (West 1904) ("'Commissions' is a term without technical meaning, but, when used to express compensation for services rendered, it usually denotes a percentage on the amount of moneys paid out or received."); *Commissions*, Black's Law Dictionary 229 (1891) ("The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., when the same is calculated as a percentage on the amount of his transactions or the amount received or expended").

For example, an executor's or administrator's entitlement to a statutory commission extends to cash proceeds received from the sale of estate assets, including real property. *See Cooper*, 238 S.W.2d at 583–84 (affirming award of administrator's "commission of 5% on all sums he has actually received in cash from the sale of the

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cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay away in cash in the course of their administration.")).

various properties of said estate" excepting any sum thereby realized paid to satisfy any debt against the properties). In this manner, executors and administrators of estates lacking in liquid assets have a means of obtaining compensation for their administration. *See Walling v. Hubbard*, 389 S.W.2d 581, 586 (Tex. App.—Houston 1965, writ ref'd n.r.e. & writ dism'd w.o.j.) ("The executor is entitled to a commission on the cash received where assets of the estate are sold.").

"The intent of the formula is to provide a fair and reasonable compensation . . . ." *In re Roots' Est.*, 596 S.W.2d 240, 243 (Tex. App.—Amarillo 1980, no writ). "Although this may seem unjust in particular instances, the statutory commission does, in a rough way, measure both the work and the responsibility of the personal representative, and perhaps more often than not the formula does not provide adequate compensation." 18 M.K. Woodward & Ernest E. Smith, III, *Texas Practice Series: Probate & Decedents' Estates* § 721 (Jan. 2026 update).

As to the circumstances justifying the denial or disallowance of a commission, Texas probate courts have long had such authority upon finding mismanagement or maladministration of an estate:

> The principle upon which compensation is refused is that, where an estate has suffered loss by the dereliction of the [executor or] administrator, the loss will not be enhanced by the allowance of commissions. But [where] the loss arising out of [the] misconduct is made up to the estate, so that the beneficiaries get the full benefit of a vigorous and efficient administration, it [seems] neither just nor logical that a bonus should be granted to them in the shape of [the] commissions denied [for the administration], thus increasing the burden which, in such cases, usually falls upon the delinquent's sureties. To the extent to which the estate has

> been properly administered, and on the amounts which [either] he or his sureties pay or make up for the losses by [*devastavit*][13] or maladministration, the administrator should be allowed such commissions as the statute provides.

Smith, 237 S.W. at 247 (quoting Woerner, *supra*, § 526, at 1271–72); *Chapman v. Brite*, 23 S.W. 514, 517–18 (Tex. App.—San Antonio 1893, no writ) (same); *see* Schouler, *supra*, § 545, at 640 ("Commissions and compensation may be forfeited by the representative's misconduct and culpable remissness in his trust.").

For example, in *Richardson v. McCloskey*, our sister court in Austin affirmed a judgment disallowing five percent commissions sought by the executors of the decedent's estate—particularly on the sale of certain real property—because the executors mismanaged the estate to the point of requiring the trial court to appoint a receiver, including misappropriating property of the estate. 261 S.W. 801, 817 (Tex.

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[13] *See McCown's Ex'rs v. Foster*, 33 Tex. 241, 244 (1870) (defining *devastavit* as "a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the duty imposed on them, for which executors [or] administrators shall answer out of their own pockets, as far as they had[,] or might have had, assets of the deceased," quoting with slight modification 2 Edward Vaughn Williams, *A Treatise on the Law of Executors and Administrators* 1629 (5th Am. ed. 1859) (citing 3 Matthew Bacon, *A New Abridgement of the Law* 510 (1832) ("A *devastavit* is a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the trust and confidence reposed in them, for which executors and administrators shall answer out of their own pockets, as far as they had, or might have had, assets of the deceased.")); *see also Devastavit*, Black's Law Dictionary (12th ed. 2024) ("The mismanagement of a decedent's estate by an administrator; esp. a fiduciary's failure to administer an estate or trust promptly and properly, as by spending extravagantly or misapplying assets"); *Devastavit*, Ballentine's Law Dictionary (3rd ed. 1969) ("Mismanagement of the estate and effects of a decedent or a misapplication or waste of the assets, in violation of the duty imposed upon an executor or administrator").

App.—Austin 1924) (op. on reh'g) (citing Schouler on Executors and Administrators § 545, at 640), *rev'd on other grounds*, 276 S.W. 680, 685 (Tex. Comm'n App. 1925). Similarly, in *Thomas v. Hawpe*, our sister court in Dallas affirmed the denial of commissions due to the administrator's misappropriation of estate funds for personal use and failure to account for such sums. 80 S.W. 129, 132 (Tex. App.—Dallas 1904, writ ref'd).

In *Chapman*, our sister court in San Antonio affirmed a judgment against the sureties on the administrator's bond after the administrator was discharged for misappropriation and maladministration, denying any offset for commissions allegedly due him. 23 S.W. at 517–18. In *Loewenstein v. Watts*, our sister court in El Paso disallowed a statutory commission on the sale of estate property because, although "administrators may, in cases of necessity, employ a broker to effect a sale," if the administrator has or expects an interest in the commission paid or to be paid to such broker, he forfeits his right to the commission. 119 S.W.2d 176, 181 (Tex. App.—El Paso 1938), *aff'd*, 137 S.W.2d 2 (Tex. 1940). And in *Norman v. Finley*, our sister court in San Antonio affirmed a probate court's denial of a commission on the sale of a house based upon an implied finding that the independent executrix had not "taken care of and managed the estate in compliance with the standards of the Probate Code" because the probate court had made no affirmative finding as required by former Section 241(a). No. 04-01-00394-CV, 2002 WL 341585, at *7 (Tex. App.—San Antonio Mar. 6, 2002, no pet.); *see also Pinkston*, 288 S.W.2d at 305–06 (finding no abuse of discretion in probate court's refusal of statutory commissions due to administrator's maladministration of estate); *Scott v. Taylor*, 294 S.W. 227, 235 (Tex. App.—Amarillo 1927, no writ) (affirming denial of commission for administrator's maladministration of affairs of estate); *cf. Brown*, 38 Tex. at 109–10 (affirming trial court's disallowance of the five percent commission on amounts paid to estate's creditors because, as a creditor of the estate, administrator merely retained the amount satisfying the debt and did not pay it out as contemplated by statute); *Trammel v. Philleo*, 33 Tex. 395, 408–11 (1870) (reversing judgment awarding administrator five percent commissions paid in specie despite the authorized sales of real and personal property of estate and payments of estate debts having been conducted not with specie, but Confederate notes, because such transactions, including the belated sales of slaves only after issuance of Emancipation Proclamation, constituted maladministration of estate property).[14]

As the only decision to interpret the statutory-commission provisions of the Estates Code, in *In re Estate of Irving*, our sister court in Corpus Chrisi–Edinburg affirmed a summary judgment declaring forfeiture of statutory commissions that had been retained by the administrator for the sale of estate property and distribution of the

[14]Specie was "[c]oin of the precious metals, of a certain weight and fineness, and bearing the stamp of the government, denoting its value as currency." *Specie*, Black's Law Dictionary 1114 (1891). Due to the value inherent in its precious metals, i.e., gold and silver, specie did not suffer the devaluation of Confederate notes during and after the Civil War. *See Trammel*, 33 Tex. at 409 ("The court cannot refrain from remarking that ordinary liberality would have directed the payment of his commission in kind with that which he gave to the creditors.").

proceeds to the heirs because (1) commissions for distribution of proceeds to heirs is expressly forbidden by Section 352.002(b)(2)(C)—providing that an administrator may not receive a commission for "paying out cash to an heir or legatee in that person's capacity as an heir or legatee"—and (2) the administrator had undisputedly failed to administer the estate in accordance with the provisions of the Estates Code; failed to file any accounting for the first sixteen years of her administration, including the initial accounting; and failed to provide documentation for expenditures from the corpus of the estate. No. 13-20-00081-CV, 2021 WL 1217340, at *1 n.4, *6–7 (Tex. App.—Corpus Christi–Edinburg Apr. 1, 2021, no pet.). In disallowing an administrator's commission due to maladministration, *Irving* demonstrates that subsections (a) and (b) of Section 352.002 are consistent with previous caselaw.

B. Section 352.002 Authorizes Commission on Cash Proceeds of Brokered Sale

There is nothing about the language of Section 352.002 that contemplates the denial or disallowance of an administrator's commission absent a finding of mismanagement or maladministration. A realtor's or broker's commission on the sale of real property represents compensation for the specific service of procuring a buyer for the benefit of a decedent's estate. An administrator's commission, on the other hand, represents compensation for the specific service of administering a decedent's estate, including, among other things, the decision to sell real property for the estate's benefit. Although they share the same formula, and the amount subject to the percentage calculation may be the same for an individual sale, these two forms of compensation are not the same because they compensate different services—one of which may be subsumed within the other. Because it misinterpreted and misapplied the term "commission" in subsections (a) and (b) of Section 352.002 to treat both forms of compensation as the same and to thereby foreclose a "double commission" by refusing the administrator's commission sought by Pyke, we agree with him that the probate court abused its discretion.

1. Realtor's commissions are authorized expenses of administration

The employment of agents to perform extraordinary services has long been considered a reasonable expense of administration due to the need for professional assistance in certain matters:

> The qualifications of executors and administrators do not include skill or capacity in any particular calling; if any such becomes necessary in the administration of an estate, it is manifestly the duty of the person administering to employ some one possessing the requisite skill, for whose compensation the estate is liable; *and the rate of compensation to the executor or administrator being fixed by the statute in recognition of this necessity, it is argued that, if with greater advantage to the estate such services are performed by the administrator himself, compensation therefor is not included in the commissions allowed for his ordinary services, and should be allowed him in addition thereto*. The most usual services of this kind are those of counsellors and attorneys at law, overseers of plantations or farms, skilled accountants or clerks, and collectors, whose assistance is very often necessary in the management and settlement of the affairs of an estate.

Woerner, *supra*, § 529, at 1276 (emphasis added) (citations omitted). In other words, because the administration of a decedent's estate may, on occasion, require special skill not possessed by its executor or administrator, and the amounts expended therefor may be considered reasonable expenses to be charged against the estate, if an executor or administrator possesses the special skill and performs services requiring the same on behalf of the estate, he may be awarded compensation in addition to the statutory commission. *See id.* Compensation for extraordinary services provided to an estate is distinct from and in addition to compensation for the administration itself. *See id.*

For example, "a commission properly due an agent for making a sale of property of the estate" is considered an expense of administration if authorized by will or court order. W.S. Simkins, *The Administration of Estates in Texas* § 269, at 376 (3d ed. 1934) (citing *Armstrong v. O'Brien*, 19 S.W. 268, 269 (Tex. 1892) (holding commission of agent employed by independent executors to sell real property of estate constitutes an expense of administration)); Simon G. Croswell, *Handbook on the Law of Executors and Administrators* §§ 127–129, at 321 (West 1897) ("Thus, where the executor claimed an allowance for brokerage commissions paid to one who negotiated a sale of real estate belonging to the estate, the charge was allowed.").

More specifically, in *Jones v. Gilliam*, the supreme court expressly approved charging a broker's commission for the sale of real property as an expense of administration when authorized by the probate court:

> In necessary cases, we do not doubt the power of the Probate Court under the statute to sanction an administrator's employment of a broker for the purpose of effecting a sale advantageous to the estate, and therein to allow a reasonable broker's commission as a legitimate expense of administration. While such authority should be sparingly and providently exercised, it cannot be said that under no conditions would the court possess it. In some instances its exercise might be necessary and prove of distinct benefit to the estate. But in all cases the Probate Court must be the judge as to the necessity for the estate's employment of a broker for

> the purpose, as well as of the amount of his compensation. These are not matters which the administrator may determine for himself. The court administers the estate, not the administrator. The administrator is but an agency of the court through which its powers are exercised.

212 S.W. at 930–31 (affirming denial of real estate broker's commissions because "[i]n the order of the court for the sale of the lands, no authority was given the administrator to employ brokers for the purpose").

Similarly, in *Jarvis v. Drew*, we observed "[t]hat an estate may properly be charged with the commission of a broker whose employment is reasonably necessary to sell land is generally conceded." 215 S.W. 970, 971 (Tex. App.—Fort Worth 1919, writ ref'd) (first citing *Armstrong*, 19 S.W. at 269; then citing *O'Brien v. Gillelan*, 15 S.W. 681, 682 (Tex. 1891) (holding trial court erred in sustaining general demurrer to trial amendment alleging the authority of the executors to contract with agents to sell land of the estate); then citing *McCown v. Terrell*, 29 S.W. 484, 487 (Tex. App.—Dallas 1894) ("It is also held that independent executors may lawfully employ agents to negotiate sales of land for them."), *writ dism'd w.o.j.*, 29 S.W. 467 (Tex. 1895); then citing *In re Willard's Est.*, 73 P. 240, 240–42 (Cal. 1903) (affirming reimbursement to administrator for agent's commission facilitating sale of estate realty as expense of administration)); *see also Ennis & Dale v. Cator*, 174 S.W. 947, 948–49 (Tex. App.—Amarillo 1915, no writ) (holding that order properly authorizing administrator's sale of real property, including $1,000 broker's commissions, just as properly vacated when purchaser failed to perform in accordance with terms of sale, thereby negating estate's liability for said commissions);

Dyer v. Winston, 77 S.W. 227, 229 (Tex. App.—Galveston 1903, no writ) (acknowledging independent executrix had authority "to employ an agent to find a purchaser for [estate] land[] and to pay him an agreed commission therefor"); *Wisbey v. Boyce*, 27 S.W. 590, 590 (Tex. App.—Galveston 1894, no writ) ("An executor may bind the estate of his testator by an agreement to pay commissions to an agent to find a purchaser for land which, under the will, he has authority to convey."); *cf. In re Ballentine's Est.*, Myrick Prob. 86, 87 (Ca. Prob. Oct. 5, 1872) (reducing brokerage fees predicated upon overage in selling real estate for amount in excess of price set by executrix but awarding reasonable brokerage fees as expense of administration), *aff'd*, 45 Cal. 696 (1873).

In each of these cases, the real estate agent or broker was retained to facilitate the sale of real property on behalf of and for the benefit of the decedent's estate, and the commission in question was for that service specifically. *See Donnan v. Adams*, 71 S.W. 580, 582 (Tex. App.—San Antonio 1902, writ ref'd) ("A real estate agent is a person who is, generally speaking, engaged in the business of procuring purchases or sales of lands for third persons upon a commission contingent upon success."). By way of contrast, the commission authorized by Section 352.002(a) compensates for an administration that may include the sale of real property but is not limited to a particular sale or sales. *See* 34 C.J.S. *Executors and Administrators*, § 944 (Apr. 2026 update) ("The purpose of allowing compensation is to reward the representative's time, labor, and trouble in administering the estate, for the responsibility incurred, and for the fidelity with which the representative discharges the duties of [his] trust."). Thus, the question raised is whether the "commission" so authorized by Section 352.002 is sufficiently broad to include both forms, with an award of the former foreclosing an award of the latter when considering the cash proceeds received from a sale of real property. Stated differently, does the language of Section 352.002(a) foreclose a "double commission" on the cash proceeds of a sale of estate real property? *See Armstrong*, 19 S.W. at 274 ("It is well settled that a person cannot act in the capacity of agent for both the buyer and seller, and receive commissions from both[.]"); *Porter v. Striegler*, 533 S.W.2d 478, 479 (Tex. App.—Eastland 1976, no writ) (op. on reh'g) ("A real estate agent is not entitled to receive a commission from both the seller and purchaser without the full knowledge and consent of both parties."); *Double Commission*, Black's Law Dictionary 341 (12th ed. 2024) ("A commission obtained by a person acting in dual roles, each of which generates a commission, such as a person serving as both executor and trustee in an estate matter."). We conclude it does not.

2. Broker's and administrator's commissions are not mutually exclusive

Section 352.002(a) does not define the term "commission" other than to (1) identify executors, administrators, and temporary administrators as those eligible for compensation, (2) set a five percent multiplier on its formula for calculation, and (3) identify the amounts subject to the multiplier as "all amounts that the executor or administrator actually receives or pays out in cash in the administration of the estate." Tex. Est. Code § 352.002(a). Nor does Section 352.002(b)(2) identify employing and compensating real estate agents or brokers to facilitate the sale of real property as a form of mismanagement or maladministration that would foreclose an award of an administrator's commission. *Id.* § 352.002(b)(2). Citing *Richardson v. McCloskey* and *Norman v. Finley* for support, however, the probate court interpreted these provisions to foreclose the statutory commission sought by Pyke on the grounds that such an award would constitute a "double commission" when paired with the realtor's commissions the estate had already paid for the sale of the properties.[15] Because we conclude these decisions are questionable authority when interpreting Section 352.002 and are in conflict with contrary supreme court authority, we find the probate court's reliance thereon was an abuse of discretion.

a. *Richardson v. McCloskey*

In *Richardson v. McCloskey*, the Austin Court of Civil Appeals affirmed the disallowance of statutory commissions for the independent executors of the decedent's estate because (1) their pleadings merely alleged their entitlement, (2) "[n]o amount or item upon which commissions were claimed was ever submitted to the court," and

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[15]The probate court also cited *In re Guardianship of Rehberg*, 745 S.W.2d 435 (Tex. App.—Houston [1st Dist.] 1988, no writ), but this decision is easily distinguishable. The court of appeals affirmed the denial of a five percent guardianship fee pursuant to Section 241(b) of the Probate Code on the ground that the cash proceeds received by the ward's estate for the sale of real property were not "gross income" but represented the corpus of the estate. *Id.* at 435–36. In so holding, the court of appeals expressly distinguished the five percent statutory commission on "cash received" authorized for executors and administrators of a decedent's estate pursuant to Section 241(a). *Id.* at 436. In other words, our sister court recognized that the formulas for the two forms of compensation were different. *See id.* And the fact that the guardian had paid a broker a six percent commission on the sale of the property was completely irrelevant to its decision. *See id.* at 435–36.

(3) "[u]nder such circumstances, if [they] were entitled as a matter of law to any commissions, they would not be entitled to charge commissions on disbursements and collections for which they had already paid agents the 5 per cent." 261 S.W. at 817. Since the probate court had no pleadings or evidence upon which to base an award, the court of civil appeals held that "it was therefore not error for it to refuse to render judgment for commissions." *Id.*

Critically, the court of civil appeals did not cite any authority for foreclosing the statutory commissions sought by the executors due to their payment of commissions to agents for the sale of real property, including the language of the statute itself. *See id.* Indeed, Article 3621 did not reference commissions at all, although its provision for executor and administrator compensation was commonly referred to in that manner. *See Smith*, 237 S.W. at 246. So it simply could not have been said that the legislature intended to include "commissions" paid to realtors or brokers within the formula for statutory compensation when the term was not therein employed. *See Lippincott v. Whisenhunt*, 462 S.W.3d 507, 508 (Tex. 2015) ("A court may not judicially amend a statute by adding words that are not contained in the language of the statute.").

Moreover, in addition to the absence of pleading and proof, the *Richardson* court further held that the executors could not recover statutory commissions because they had "unlawfully appropriated and used the funds of the estate and refused to account for them." *Richardson*, 261 S.W. at 817 ("Commissions are not allowed as an offset to a judgment against an administrator for money not accounted for." (first citing Schouler on Executors and Administrators § 545, at 640; then citing *Thomas*, 80 S.W. at 132; and then citing *Chapman*, 23 S.W. at 517–18). Indeed, the court of civil appeals had previously affirmed the district court's appointment of a receiver pendente lite in a suit by the surviving brothers and sisters of the decedent—residuary legatees and devisees of his will—for an accounting, partition and distribution of estate property alleging "negligent and illegal handling of the estate" by the independent executors, concluding that the evidence of their mismanagement of the estate supported the receiver's assumption of its management. *Richardson v. McCloskey*, 228 S.W. 323, 325–31 (Tex. App.—Austin 1920, writ dism'd w.o.j.) (op. on reh'g). Thus, of the three grounds specifically identified by the court of civil appeals, its disallowance of statutory commissions due to the payment of realtor's commissions from the same cash proceeds was the only ground without support from either procedural or decisional authority.

Furthermore, the commission of appeals subsequently reversed the Austin court and remanded the case for a new trial without specifically addressing the disallowance of statutory commissions. *See Richardson*, 276 S.W. at 682–85 (holding, for example, that monuments and tombstones are "funeral expenses" chargeable to the decedent's estate, as are premiums paid to insure estate property). Although the commission approved the conclusions of law reached by the court of civil appeals as to matters presented in the application for writ of error but not specifically discussed, it did not identify statutory commissions as a matter presented, specifically recommending to the supreme court that on remand the trial be conducted "in a manner consistent with" its opinion and the opinion of the court of civil appeals "as herein approved." *Id.* at 685.

Although the supreme court rendered the judgment recommended by the commission, *see Texas Rules of Form: The Greenbook* 5.2.1 (Texas Law Review Ass'n ed., 15th ed. 2022), the precedential value of the opinion of our sister court thereby reversed is difficult to surmise due to the unique remand language employed:

> The judgments of the Court of Civil Appeals and district court are both reversed, and the cause is remanded to the district court for another trial *in a manner consistent with the opinion of the Commission of Appeals, and the opinion of the Court of Civil Appeals in so far as same is not inconsistent with that of the Commission of Appeals.*

Richardson, 276 S.W. at 685 (emphasis added). The highlighted language neither "adopts" nor "approves" the entirety of either opinion, or even a specific holding thereof. *See Texas Rules of Form: The Greenbook*, 5.2.2–2.4. And contemporaneous authorities provide no interpretation of its precedential authority. *See* Ben H. Powell, *A Comparative Review of the Recent Statute Changing Method of Appointment of Members of the Commission of Appeals of the Supreme Court and Enlarging Their Duties*, 9 Tex. L. Rev. 190, 201 (1931); Recent Cases, *Courts – Opinions of Texas Commission of Appeals*, 12 Tex. L. Rev. 356, 358 (1934).

Finally, despite the supreme court's having cited the opinion of the commission of appeals as its own authority on another issue, *see Knopf v. Gray*, 545 S.W.3d 542, 546 (Tex. 2018) (employing citation form of Rule 5.2.2 of the thirteenth edition of the Greenbook in support of a different point of law), no Texas court has treated the opinion of the court of civil appeals as having been expressly approved by the supreme court. *Compare Norman*, 2002 WL 341585, at *7 n.3 (citing opinion as having been "reversed on other grounds" by the supreme court), *with Bryan v. Bryan ex rel. Mollie Nettles Bryan Trust*, No. 12-01-00028-CV, 2001 WL 1651942, at *1 (Tex. App.—Tyler Dec. 21, 2001, no pet.) (citing opinion as having been "reversed on other grounds" by the commission of appeals), *and Long v. Long*, 252 S.W.2d 235, 250 (Tex. App.—Texarkana 1952, writ ref'd n.r.e.) (op. on reh'g) (same). And a contemporary legal encyclopedia published a few years after the supreme court's judgment referred to the reversal as a decision of the commission of appeals, not the supreme court. *See Decedent's Estates*, 14 Tex. Jur. § 644, at 464–65 nn.14 & 15 (1931) (citing decision of court of civil appeals as authority for forfeiture of statutory commission due to willful default or negligent mismanagement and as having been reversed on other grounds by the commission of appeals).

Under these circumstances, we decline to consider our sister court's decision to disallow a statutory commission on the cash proceeds from a sale of real property when a realtor's or broker's commission has been paid on the same transaction as persuasive, let alone binding, authority.

b. *Norman v. Finley*

As observed above, in *Norman v. Finley*, the San Antonio Court of Appeals affirmed the probate court's denial of a commission on the sale of a house based upon an implied finding that the independent executrix had not "taken care of and managed the estate in compliance with the standards of the Probate Code" because it had made no such affirmative finding of care as required by former Section 241(a). 2002 WL 341585, at *7. In footnote 3 of its opinion, however, the court identified as an additional ground of disallowance the executrix's payment of a realtor's commission in connection with the sale of a house, citing the decision of the court of civil appeals in *Richardson v. McCloskey*. *Id.* at *7 n.3. In so holding, the court failed to explain how the language of Section 241(a) authorized this ground of denial. *See id.*

Since we disagree with our sister court's conclusion that *Richardson v. McCloskey* is persuasive authority, we decline to follow this aspect of its decision.

c. *Jones v. Gilliam*

Although cited by neither the probate court nor Pyke, in *Jones v. Gilliam*, the Amarillo Court of Civil Appeals disallowed as a charge against the decedent's estate the five percent commission the administrator had paid to a broker for the sale of real property on the ground that the administrator was already to be paid a five percent statutory commission on the cash proceeds of the sale and thus to allow the broker's commission in addition "would amount to a double charge for the same services." 199 S.W. at 698. In so holding, the court treated both the broker's commission and the statutory commission as compensation for the same service, with the commission authorized by Article 3621 foreclosing the payment of the broker's commission as a charge against or expense of the estate, as authorized by Article 3623:

> It does not occur to us that money paid a broker on a contract for 5 per cent. commission to effect a sale properly falls under [A]rticle 3623, allowing all reasonable expenses necessarily incurred by the administrator

> in the preservation, safe-keeping, and management of the estate and all reasonable attorney's fees necessarily incurred in the course of administration. The appellant contests the finding or the idea that the amounts claimed were for commission for sale, but asserts that they were for services rendered in the management of the estate. The administrator testified the compensation agreed upon was 5 per cent. commission on the amount of the sale. They were employed as brokers and sold the land and contracted as such. *By such contract the brokers undertook to sell the land and to perform a duty imposed by the statutes upon the administrator. This duty or power could not be delegated by the administrator to another and certainly not without an order authorizing him to do so, or approved by the court. The law fixed the compensation of the administrator at 5 per cent. on the money received on the consideration paid for the land, and to permit another 5 per cent. for the services included in the power to sell would amount to a double charge for the same services. We believe the court correctly refused to allow these items.*

Id. (emphasis added).

In this manner, the court of civil appeals focused on the cash receipts from the sale of real estate as the amount to be multiplied, equated the five percent formula for the commission paid the broker by the administrator with the five percent formula set forth in Article 3621—assuming the services to be the same—and thereby rejected the former as one of the "reasonable expenses" authorized by Article 3623. *See id.*; *see also Jarvis*, 215 S.W. at 971 (observing that Article 3623 provided that "[e]xecutors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe keeping and management of the estate, and all reasonable attorney's fees that may be necessarily incurred by them in the course of the administration"). In other words, the court held that the administrator could not be reimbursed for his payment of the broker's commission on the sale when he was going to be compensated the same amount for the same sale. *See id.*; *see also Trammel*, 33 Tex.

at 411 ("It is not the policy of the law that liberal commissions should be allowed to executors and administrators for settling the estates of deceased persons, and at the same time attorneys be paid for doing the business.").

When the Supreme Court of Texas considered the administrator's application for writ of error, however, it did not interpret the interaction between Articles 3621 and 3623 in the same way. *Jones*, 212 S.W. at 931. Instead, the supreme court acknowledged that there may be certain instances when the peculiar services of a broker may be sufficiently necessary to allow an administrator to receive reimbursement from the estate for the former's commission without foreclosing his own compensation for the same transaction:

> In necessary cases, we do not doubt the power of the Probate Court under the statute to sanction an administrator's employment of a broker for the purpose of effecting a sale advantageous to the estate, and therein to allow a reasonable broker's commission as a legitimate expense of administration. While such authority should be sparingly and providently exercised, it cannot be said that under no conditions would the court possess it. In some instances its exercise might be necessary and prove of distinct benefit to the estate. But in all cases the Probate Court must be the judge as to the necessity for the estate's employment of a broker for the purpose, as well as of the amount of his compensation. These are not matters which the administrator may determine for himself. The court administers the estate, not the administrator. The administrator is but an agency of the court through which its powers are exercised.
>
> Here, as already said, there was no authorization by the court for the employment of the brokers. There was accordingly no determination beforehand by the court that the employment was necessary. The administrator, acting independently, contracted for the employment. His action was not conclusive upon the estate. The question as to the necessity for the employment still remained within the province of the court to determine on the final settlement. In reaching the same judgment as the Probate Court, the District Court, on the appeal, found as a fact that the expenditure was unnecessary and that it did not appear but that the

> administrator could have effected the sale himself. The administrator was allowed, for himself, the statutory commission on the amount realized from the sale. In the state of the record there is no warrant for a revision here of the court's judgment in the matter. It cannot be said as a matter of law that the employment was necessary.
>
> Cases, such as *Armstrong* . . . , 19 S.W. [at 269], holding that an independent executor may employ agents to sell the lands of the estate and the estate thereby becomes liable for a reasonable commission earned under such employment, do not control the question here. An independent executor has the same authority in that regard that the Probate Court possesses in ordinary administrations. Here, the Probate Court has, in effect, declined to exercise the authority because of the want of any necessity for its exertion.

See id.

If, as a matter of law, the statutory commission due to the administrator on the cash proceeds from the sale of real property foreclosed his reimbursement for the broker's commission he paid on those same proceeds, i.e., as a double commission or charge for the same services, the supreme court could have so held. Instead, the court's analysis clearly contemplated that, if the probate court authorizes the payment of a realtor's or broker's commission to facilitate the sale of real property for the benefit of the decedent's estate, an executor or administrator may also receive a statutory commission on the cash proceeds from the sale. *See id.* at 930 (observing probate court's order authorizing sale provided "no authority" to the administrator to employ brokers, "[n]or was the payment of such commissions authorized in the court's action on the report of either sale"). And the court's use of the phrase "sparingly and providently" indicates that it foresaw circumstances when a broker could provide a unique service not available through the administrator alone, thereby countenancing commissions for distinct but complementary services for the same transaction. *See id.* at 931; *see also Willard's Est.*, 73 P. at 242 ("Where the expenditure is for the benefit of the estate, and is necessary, and is for services which it is the duty of the administrator to perform, but which he cannot himself perform, it is [within] the discretion of the judge to make an allowance to the administrator for such expenditure.").

d. *Loewenstein v. Watts*

Finally, in *Loewenstein*, our sister court in El Paso disallowed a statutory commission of $625 to a co-administrator of the decedent's estate—representing one-half of the five percent on the $25,000 received in cash proceeds from the sale of real property—because he possessed a financial interest in the brokerage firm named after him to which he paid $1,250 as a five percent commission on the same sale, the amount of which the district court found was taken into consideration in determining his firm's compensation. 119 S.W.2d at 180–81. Trying this case on appeal from the probate court, *see id.* at 183, the district court disallowed the commission in question, observing that "[w]hile administrators may, in cases of necessity, employ a broker to effect a sale, if, either directly or indirectly, he has or expects an interest in the commission paid or to be paid to such broker, he forfeits his right to the statutory commission." *Id.* at 181. But the district court left in place the $625 commission awarded by the probate court to the co-administrator bank because it had no financial interest in the broker's commission paid—effectively holding that the five percent broker's commission and the bank's one-half of the five percent administrator's commission were not mutually exclusive, even though calculated on the same amount. *See id.* at 180, 182 (entering judgment for statutory commission for the bank exactly $625 more than the commission awarded its co-administrator); *see also Wright v. Wright*, 304 S.W.2d 951, 952 (Tex. App.—Amarillo 1957, writ ref'd) ("We are of the opinion where there were three executors, as provided for here, they would not be entitled to more than 1/3 of the total five per cent commission.").

Affirming this portion of the district court's judgment, the court of civil appeals agreed. *See Loewenstein*, 119 S.W.2d at 184. And the supreme court affirmed the intermediate court's judgment consistent with its decision in *Jones v. Gilliam*. *See Loewenstein*, 137 S.W.2d at 7.

e. *Summary*

Summarizing *Jones* and *Loewenstein*—and distinguishing *Richardson* and *Norman*—if a probate court authorizes an administrator to sell real property through a realtor or broker for the benefit of the decedent's estate, the administrator is entitled to a statutory commission on the cash proceeds received from the sale even when the estate paid a realtor's or broker's commission on the same proceeds. In authorizing this agency, a probate court implicitly finds that the realtor or broker can provide services that are not readily available through the administrator, thus justifying the expense to the estate without foreclosing the statutory compensation due the administrator, particularly for services not involving cash receipts or disbursements. If, however, the court finds mismanagement or maladministration on the part of the administrator, it possesses the discretion to deny, reduce, or otherwise disallow the statutory commission.

3. The probate court abused its discretion in reducing the commission

Considering both the language of Section 352.002 and the authorities discussed above, we find that the probate court abused its discretion by denying Pyke a statutory commission on the cash proceeds received by the Estate for the sale of the Carrollton and Plano properties. Conflating the term “commission” to include commissions paid to real estate agents or brokers to facilitate the sale of real property—and thereby to foreclose a “double commission” by refusing to award an administrator a commission on the cash proceeds received from the sale so facilitated—constitutes a misinterpretation and misapplication of Section 352.002(a).

Section 352.002(a) mandates an award of a five percent administrator’s commission on cash receipts and disbursements that take place during the administration of a decedent’s estate if the administrator complies with the standards set forth by the Estates Code. Tex. Est. Code § 352.002(a). The commission authorized applies solely to an executor or administrator of an estate; it contemplates no other form of commission nor any recipients other than executors and administrators. *Id.* Section 352.002(b)(2), in turn, excludes certain forms of cash receipts and disbursements that may not be included in the formula for calculating a statutory commission, and the cash proceeds from the sale of real property are not expressly excluded. *Id.* § 352.002(b)(2); *see Hughes*, 246 S.W.3d at 628 (“It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose [and] every word excluded from a statute must also be presumed to have been excluded for a purpose."); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) (same). Finally, Section 352.004(1) authorizes a probate court to deny, reduce, or otherwise disallow a commission only when "the court finds that the executor or administrator has not taken care of or managed estate property prudently." Tex. Est. Code § 352.004(1). Absent such a finding of mismanagement or maladministration, a probate court is without such discretion. *See id.*

Here, not only did the probate court make no finding of mismanagement or maladministration against Pyke, it expressly found that he had "taken care of and managed the Estate in compliance with the standards set forth in the Texas Estates Code." Indeed, counsel for Hunter's estate acknowledged this to be so in open court. *See Willard's Est.*, 73 P. at 242 ("The contestants of the account offered no evidence, and there is no evidence tending to impeach the good faith of the administrator."). And the probate court had also expressly authorized the payment of a realtor's commission for the sales of the Carrollton and Plano properties as contemplated by the supreme court's decision in *Jones v. Gilliam*. Nevertheless, the probate court disallowed a statutory commission on the net cash receipts from those sales by finding it "unreasonable[] and unjust" due to the previous payment of realtor's commissions. In this manner, the court effectively interpreted Section 352.002(a) to apply equally to both forms of commission and Section 352.004(1) to include an "unreasonable[] and unjust" standard for disallowance, neither of which finds support in the statutory language.

And although we are mindful that Pyke never presented the probate court with the authority of the supreme court's decision in *Jones v. Gilliam*, we are constrained to interpret and apply the law as it is, not how it has been presented. *In re Gamble*, 676 S.W.3d 760, 782 n.15 (Tex. App.—Fort Worth 2023, orig. proceeding) ("[H]owever sympathetic we may be to the trial court's plight in this regard, we must consider all pertinent legal authorities in determining whether a misinterpretation or misapplication of the law occurred."). Simply put, the supreme court's analysis in *Jones v. Gilliam* contemplates that, when a probate court has authorized the sale of real property that includes the payment of a realtor's or broker's commission and otherwise finds that there has been no mismanagement or maladministration of the decedent's estate, there is no basis whatsoever for denying, reducing, or otherwise disallowing a statutory administrator's commission on the cash proceeds the estate receives from the sale. And nothing about Section 352.002(a) or Section 352.004(1) suggests otherwise.

Pyke represented to the probate court, without contradiction, that he had determined that the deceased did not have a will subject to probate by going through her substantial personal and business papers; investigated and resolved her tax status with the IRS; discovered a bank account with over $30,000 deposited for ultimate distribution to the Wahlens; and arranged for the cleaning and preparation for the sale of the properties. None of these activities involved the receipt or disbursement of cash subject to the commission formula, and to the extent he received compensation for his provision of legal services, he provided evidence that those services were separate and distinct from the services he provided as the Estate's administrator. Moreover, he represented—again, without contradiction—that the Wahlens had requested the involvement of a realtor to facilitate the sales of the properties and that only through employing a realtor could he access an MLS to facilitate the sales. Add to this accounting that the probate court had expressly authorized the realtor's commissions paid by the Estate for these sales, and this is the exact situation contemplated by the supreme court in *Jones v. Gilliam*.

Accordingly, we conclude that the probate court abused its discretion by denying Pyke the statutory commission he sought on the net cash proceeds from the sales of the Carrollton and Plano properties.[16]

V. Conclusion

"The law, once determined, must be followed, though an officer of the law, judge, or court may have theretofore labored under an erroneous impression as to what the law was." *Jarvis*, 215 S.W. at 970 (disregarding asserted custom of court concerning whether administrator's bond was subject to reimbursement as expense of estate).

[16]The trial court gave no reason for why it denied the remaining $205 Pyke sought for a commission on cash proceeds. In light of the absence of a finding that Pyke mismanaged or maladministered the estate, and without indication that such reimbursement would be prohibited, we conclude that the same reasoning applies to the remainder of the unreimbursed cash-receipts commission.

Because the probate court erroneously denied Pyke any statutory commission on cash proceeds in compensation for his good faith administration of the Estate, including on those proceeds received from the sales of the Carrollton and Plano properties, we reverse and render judgment awarding him $26,109.55 as the statutory administrator's commission to which he is entitled under Section 352.002(a).

/s/ Wade Birdwell

Wade Birdwell
Justice

Delivered: August 13, 2026