



## Fourth Court of Appeals San Antonio, Texas

### MEMORANDUM OPINION

No. 04-19-00698-CV

#### IN THE INTEREST OF J.R.B., JR., a Child

From the 45th Judicial District Court, Bexar County, Texas

Trial Court No. 2017-PA-02035

Honorable Richard Garcia, Judge Presiding<sup>1</sup>

Opinion by: Irene Rios, Justice

Concurring Opinion by: Beth Watkins, Justice

Sitting: Patricia O. Alvarez, Justice

Irene Rios, Justice

Beth Watkins, Justice

Delivered and Filed: May 13, 2020

#### AFFIRMED

This appeal involves a standing provision in the family code regarding a family member seeking conservatorship of the child, Jason, after the trial court terminated the parent-child relationship between Jason and his parents.<sup>2</sup> In three issues, appellant Grandmother appeals the trial court's order, arguing the trial court abused its discretion by finding Grandmother does not have standing to file an original suit for conservatorship. We affirm the trial court's order.

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<sup>1</sup> The termination order was signed by the Honorable Richard Garcia. The Honorable John Gabriel, sitting by assignment, presided over the hearing on the motions to strike and signed the order striking Grandmother's pleadings.

<sup>2</sup> To protect the identity of a minor child, we refer to the parents as "Mother" and "Father," the paternal grandmother as "Grandmother," and the child by the alias "Jason." See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b)(2).

## **BACKGROUND**

The Department of Family and Protective Services (“the Department”) placed Jason with Grandmother after it filed suit for termination of Mother’s and Father’s parental rights. On July 30, 2018, the trial court signed an order terminating both Mother’s and Father’s parental rights to Jason and appointing the Department as Jason’s permanent managing conservator. At that time, Jason remained in Grandmother’s care. On August 25, 2019, the Department removed Jason from Grandmother’s care based upon several allegations. On September 3, 2019, Grandmother filed a “Petition in Intervention and to Modify Original Petition for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship Filed by the Department of Family and Protective Services.” Grandmother requested that she be named Jason’s sole managing conservator or, in the alternative, be allowed to adopt Jason.<sup>3</sup> On September 4, 2019, and September 11, 2019, Jason’s attorney ad litem and the Department respectively filed separate motions to strike Grandmother’s pleadings on the basis that Grandmother lacks standing.

The trial court held a hearing on September 16, 2019, at which the trial court heard testimony from Grandmother and Richard Garza, a case manager with Divinity Family Services, and argument from the Department, Jason’s attorney ad litem, and Grandmother’s counsel. On November 22, 2019, the trial court signed an order granting the Department’s and the attorney ad litem’s motions to strike Grandmother’s pleadings on the basis that Grandmother does not have standing. Grandmother appeals.

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<sup>3</sup> Grandmother raises no independent issues relating to adoption in this appeal.

## STANDING

### **Standard of Review**

“In an original suit affecting the parent-child relationship in which the petitioner seeks adoption or managing conservatorship, the question of standing is a threshold issue.” *In re A.M.*, 312 S.W.3d 76, 80 (Tex. App.—San Antonio 2010, pet. denied). Standing is a component of subject-matter jurisdiction and is a constitutional prerequisite to maintaining a lawsuit under Texas law. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). “The Texas Legislature has provided a comprehensive statutory framework for standing in the context of suits involving the parent-child relationship.” *In re H.G.*, 267 S.W.3d 120, 124 (Tex. App.—San Antonio 2008, pet. denied). “When standing to bring a particular type of lawsuit has been conferred by statute, we use that statutory framework to analyze whether the petition has been filed by a proper party.” *Jasek v. Tex. Dep’t of Family & Protective Servs.*, 348 S.W.3d 523, 528 (Tex. App.—Austin 2011, no pet.). “The party seeking relief must allege and establish standing within the parameters of the statutory language.” *Id.* at 528; *see also In re H.G.*, 267 S.W.3d at 124.

Statutory construction is a legal question and is reviewed de novo. *In re A.M.*, 312 S.W.3d at 81. “In construing a statute, our primary objective is to determine the legislature’s intent, which, when possible, we discern from the plain meaning of the words chosen.” *Id.*

### **Discussion**

In three issues, Grandmother argues the trial court erred when it concluded she did not have standing to file an original suit for conservatorship.<sup>4</sup>

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<sup>4</sup> We address all three issues raised by Grandmother together.

#### **A. Standing Under Section 102.003**

In two issues, Grandmother argues she met the requirements of either section 102.003(a)(9) or 102.003(a)(12) of the Texas Family Code.

##### **1. Applicable Law**

Section 102.003 of the Texas Family Code addresses general standing to file suit. The pertinent sections state that “[a]n original suit may be filed at any time by: ...

a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;

...

a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person’s home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition[.]

TEX. FAM. CODE ANN. § 102.003(a)(9), (12).

##### **2. Analysis**

###### ***a. Standing Pursuant to Section 102.003(a)(12)***

We first address Grandmother’s argument that she has standing to file an original suit as a foster parent pursuant to Texas Family Code 102.003(a)(12). During the hearing on the motions to strike, Garza testified that Divinity Family Services licensed Grandmother as a foster parent on August 20, 2019. Garza further testified that Grandmother’s licensing ended five days later on August 25, 2019. Therefore, because Grandmother was not a foster parent on September 3, 2019, the date on which she filed her petition, she lacks standing to file an original suit as a foster parent under to Texas Family Code section 102.003(12).

###### ***b. Standing Pursuant to Section 102.003(a)(9)***

We next address Grandmother’s contention that she has standing to file an original suit pursuant to Texas Family Code 102.003(a)(9). Here, the record shows that Jason was in

Grandmother's care from September 27, 2017 until August 25, 2019, which was more than six months. Grandmother filed her petition on September 3, 2019, which was less than 90 days from the time of Jason's removal. Therefore, pursuant to section 102.003(a)(9), Grandmother has standing to file an original suit.

However, Grandmother's standing under section 102.003(a)(9) is not determinative. Section 102.006 expressly limits the standing of certain parties who would otherwise have standing to file suit under another provision of the family code. *See, e.g., In re J.C.*, 399 S.W.3d 235, 239 (Tex. App.—San Antonio 2012, no pet.) (stating that section 102.006 does not confer standing, but instead limits which parties have standing). Even if standing is established, section 102.006 can limit standing in cases where the parent-child relationship has been terminated, such as here. *See TEX. FAM. CODE ANN. § 102.006*. Therefore, we next examine how section 102.006 affects Grandmother's standing or lack thereof.

### ***B. Section 102.006 Limits and Exceptions***

Grandmother contends that the trial court erred by concluding section 102.006(c) limited her standing to file an original suit. Grandmother argues she falls within the parameters of section 102.006(b)(1), and therefore, has standing to file an original suit.

#### **1. Applicable Law**

Texas Family Code section 102.006 expressly limits the standing of certain parties who would otherwise have standing to file an original suit affecting the parent-child relationship. *Id.* Generally, relatives of terminated parents do not have standing to file an original suit concerning the child. *Id.* § 102.006(a)(3). However, “[t]he limitations on filing suit ... do not apply to a person who ... has a continuing right to possession of or access to the child under an existing court order.” *Id.* § 102.006(b)(1). Additionally, under subsection (c) the limitations on filing suit do not apply to a grandparent of the child if the grandparent files “a suit for modification requesting

managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated in a suit filed by the Department of Family and Protective Services requesting the termination of the parent-child relationship.” *Id.* § 102.006(c); *see also In re J.C.*, 399 S.W.3d at 239.

## **2. Analysis**

### ***a. The Section 102.006(b)(1) Exception to Standing Limitation***

Grandmother contends she retains standing to file an original suit pursuant to section 102.006(b)(1) because she has a continuing right to possession or access to Jason pursuant to the trial court’s order. According to Grandmother, “by placing and continually renewing placement of [Jason] in [Grandmother]’s home such act created in [Grandmother] a continuing right to possession of or access to [Jason] by every Court order issued thereafter placement was authorized.” Grandmother’s argument continues that “the actual possession, care, control, and daily access to [Jason] was entrusted to [Grandmother].” Our review of the record, however, reveals no court orders in which the trial court named Grandmother as Jason’s conservator or grants Grandmother the continuing right to possession of or access to Jason. Rather, the trial court’s orders name the Department — not Grandmother — as, first, the temporary managing conservator and then, as permanent managing conservator upon the termination of Mother’s and Father’s parental rights.<sup>5</sup> Further, the record shows the Department removed Jason from Grandmother’s care. Therefore, upon that removal, Grandmother was no longer entrusted with Jason’s “actual possession, care, control, and daily access” by the managing conservator.

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<sup>5</sup> Grandmother also points us to Chapter 263 of the Texas Family Code, which addresses the review of the placement of children entrusted into the Department’s care. Grandmother appears to argue that, based upon the provisions in Chapter 263, she should have been allowed to present evidence relating to the allegations that led to Jason’s removal from her care. We do not address this multifarious argument. *See City of San Antonio v. Rodriguez*, 856 S.W.2d 552, 555 n.2 (Tex. App.—San Antonio 1993, writ denied).

Accordingly, Grandmother has not shown that she retains standing to file an original suit pursuant to section 102.006(b)(1).

***b. The Section 102.006(c) Exception to Standing***

Section 102.006(c) requires suit to be filed no later than the ninetieth day after the date the parent-child relationship between the child and the parents is terminated. TEX. FAM. CODE ANN. § 102.006(c). Here, the trial court signed the order terminating Mother's and Father's parental rights on July 30, 2018. Grandmother filed her petition on September 3, 2019. Therefore, because Grandmother did not file her petition within 90 days of that date, the family code deprives her of standing to bring suit. TEX. FAM. CODE ANN. § 102.006(a), (c). Accordingly, we conclude that the trial court did not err by concluding Grandmother lacked standing to file an original suit. Issues one, two, and three are overruled.

Irene Rios, Justice