

Denied and Opinion Filed August 17, 2017.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00953-CV

IN THE INTEREST OF K.S., A CHILD

On Appeal from the 416th Judicial District Court
Collin County, Texas
Trial Court Cause No. 416-51643-2017

MEMORANDUM OPINION

Before Justices Lang, Myers, and Boatright
Opinion by Justice Lang

This original proceeding concerns a Suit Affecting the Parent Child Relationship (SAPCR) in which relator Kathryn Elizabeth Schiver, the biological mother of a minor child, complains of the trial court's denial of her plea to the jurisdiction and grant of temporary orders permitting relator's estranged wife¹ possession of the child and naming her possessory conservator. After reviewing relator's petition and the mandamus record, we have determined that relator is not entitled to mandamus relief and deny the petition for writ of mandamus.

Mandamus Standard

An appellate court may issue a writ of mandamus to correct an abuse of discretion for which relator has no adequate remedy by appeal. *In re Prudential Ins. Co.*, 148 S.W.3d 124,

¹ Relator states that she and real party in interest Cassandra Schiver were married on October 19, 2013 and separated on January 8, 2017. By using terms such as wife and married, we do not intend to make any determination of whether the marriage was legally-valid. That is not an issue before this Court in this proceeding.

135–36 (Tex. 2004) (orig. proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). A failure by the trial court to apply the law correctly constitutes an abuse of discretion. *Walker*, 827 S.W.2d at 840. Where the relator challenges the trial court’s subject matter jurisdiction to enter a temporary order in a suit affecting the parent-child relationship, a remedy by appeal is inadequate. *See In re Herring*, 221 S.W.3d 729, 730 (Tex. App.—San Antonio 2007, orig. proceeding) (“Because temporary orders in suits affecting the parent-child relationship are not appealable, a petition for a writ of mandamus is an appropriate means to challenge them.”).

Applicable Law

A person seeking conservatorship of a child must have standing to bring suit. *In re I.I.G.T.*, 412 S.W.3d 803, 805–06 (Tex. App.—Dallas 2013, no pet.) (citing *In re M.K.S.–V.*, 301 S.W.3d 460, 463 (Tex. App.—Dallas 2009, pet. denied)). Standing is a component of subject-matter jurisdiction and is a constitutional prerequisite to maintaining a lawsuit. *Id.*; *In re M.P.B.*, 257 S.W.3d 804, 808 (Tex. App.—Dallas 2008, no pet.). We review standing under the same standard we use for subject-matter jurisdiction generally: whether the pleader alleged facts that affirmatively demonstrated the court's jurisdiction to hear the cause. *In re I.I.G.T.*, 412 S.W.3d at 805–06. Standing in SAPCRs is governed by the family code, and a party bringing a SAPCR must plead and establish standing under the family code’s provisions. *M.K.S.–V.*, 301 S.W.3d at 464. If the party fails to do so, the trial court must dismiss the suit. *Id.* When, as here, the trial court makes no separate findings of fact and conclusions of law, we must draw every reasonable inference supported by the record in favor of the trial court’s judgment. *In re I.I.G.T.*, 412 S.W.3d at 506.

Analysis

Here, real party in interest Kassandra Schiver alleged standing to bring a SAPCR under section 102.003(a)(9), which provides:

(a) An original suit may be filed at any time by: ...(9) 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....

TEX. FAM. CODE ANN. § 102.003(a)(9) (West Supp. 2012). In computing the time under that provision, “the court may not require that the time be continuous and uninterrupted but shall consider the child’s principal residence during the relevant time preceding the date of commencement of the suit.” *Id.* § 102.003(b). A “principal residence” is (1) a fixed place of abode; (2) occupied consistently over a substantial period of time; (3) that is permanent rather than temporary. *M.K.S.–V.*, 301 S.W.3d at 464; *M.P.B.*, 257 S.W.3d at 809.

Kassandra filed her SAPCR on March 24, 2017. Accordingly, we examine the record for evidence that Kassandra had actual care, control, and possession of the child for at least six months not ending prior to December 24, 2016 (90 days before Kassandra filed the SAPCR). Kassandra’s petition stated that she had standing pursuant to section 102.003(a)(9) in that she had actual care, control, and possession of the child for at least six months ending not more than 90 days before she filed the SAPCR. The mandamus record shows that relator Kathryn and Kassandra married on October 19, 2013, the child was born August 30, 2014, Kathryn and Kassandra separated on January 8, 2017, and Kassandra moved out of the martial residence on January 8, 2017. Kathryn presented no evidence in support of her plea to the jurisdiction and did not provide this Court with a transcript of the hearing on the plea to the jurisdiction.

It is Kathryn’s burden as relator to provide the court with a record sufficient to establish her right to relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); TEX. R. APP. P. 52.3(k), 52.7(a). She has not met that burden here. Moreover, because the trial court found Kassandra had standing and the court did not make findings of fact and conclusions of law, we must draw every reasonable inference supported by the record in support of the trial court's judgment. *See In re I.I.G.T.*, 412 S.W.3d at 808 (citing *M.P.B.*, 257 S.W.3d at 808).

Here, the trial court could reasonably have determined that Kassandra met the requirements of section 102.003(a)(9) because Kassandra lived with the child from birth until January 8, 2017 — a period of two years, four months, and eight days. Assuming Kassandra had no contact with the child beginning on January 8, 2017, then her actual care, control, and possession of the child ended less than 90 days before she filed the SAPCR. Under these facts, the trial court did not abuse its discretion in denying the plea to the jurisdiction.

Based on the record before us, we conclude relator has not shown she is entitled to the relief requested. Accordingly, we deny relator's petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/s/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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