

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA12-11

TOMMY E. THOMPSON and IRENE
THOMPSON

APPELLANTS

V.

CITY OF BAUXITE, ARKANSAS, ET AL.
APPELLEES**Opinion Delivered** October 24, 2012APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[No. CV-2008-769-1]HONORABLE BOBBY D.
McCALLISTER, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellants Irene and Tommy Thompson filed a complaint alleging that a petition for annexation of certain lands to the City of Bauxite was defective because it was not based on the signatures of the statutorily required majority of the total number of real-estate owners in the area affected; that appellees City of Bauxite and Gary Duncan failed to comply with the statutory requirements; that various legal descriptions did not accurately describe the affected property; and that the annexation was a “land grab” done for improper purposes. The court dismissed certain allegations and issued a Rule 54(b) certification. However, in a prior appeal, *Thompson v. City of Bauxite*, 2010 Ark. App. 138, we found the certification to be inadequate and dismissed the appeal.

Regarding the remaining claims, on September 21, 2011, the circuit court entered an order finding that jurisdiction and venue were proper; notice of the annexation was given in accordance with Ark. Code Ann. § 14-40-601 (Repl. 1999); the published notice accurately described the real property to be annexed; more than fifty percent of the owners within the area

to be annexed approved of the annexation; and the circuit court dismissed appellants' complaint. A timely notice of appeal was filed on October 13, 2011. In this second appeal, appellants argue that because appellees' petition for annexation was brought by parties who lacked standing, it is void ab initio. We see no merit to their argument and affirm.

This case began in October 2007 when appellee Gary Duncan circulated a petition for annexation among owners of property contiguous to the City of Bauxite, in Saline County, Arkansas. He obtained signatures on the petition representing owners of property equal to 154.82 acres, with intentions that 272.42 acres be annexed to Bauxite with a majority of land equaling 136.22 acres. At the time the petition was filed with the county court, approximately fifty-seven percent of the land to be annexed was represented by owner signatures. However, appellants claimed that Duncan had failed to also obtain signatures representing a majority of the impacted landowners in addition to signatures representing a majority of the land at issue.

On November 19, 2007, the Bauxite City Council passed Ordinance 2007-17 approving the annexation of the entire 272.42 acres. The final order of the county court granting annexation was entered on December 4, 2007, and it was ratified by Bauxite City Council Ordinance 2007-19 on December 17, 2007. The ordinance was filed with the Saline County Clerk on January 7, 2008. Appellants sought to prevent the annexation by filing a complaint with the Saline County Circuit Court on July 31, 2008. In response, appellees filed a motion to dismiss asserting that appellants' complaint was untimely and that they lacked standing because they were not interested parties. Appellants responded to the motion to dismiss countering that appellees lacked standing to bring the petition at the outset and had failed to acquire the requisite signatures of a majority of land owners.

On July 1, 2009, the circuit court entered an order finding that appellants' complaint was barred by the statute limiting the time for filing jurisdictional claims challenging annexation. The court dismissed the standing allegations from appellants' complaint and certified pursuant to Arkansas Rules of Civil Procedure 54(b) that the judgment was a final judgment for all purposes. Appellants appealed, and on April 21, 2010, our court dismissed the appeal for lack of a final order. In our opinion we noted that appellants' claims relating to the adequacy and sufficiency of notice to affected landowners and to whether the affected land was adequately described were left unresolved, and as such the appeal was premature. However, on September 14, 2011, the circuit court issued a second opinion, finding that the legal description and boundaries were accurate, all of the owners had been notified, and greater than fifty percent of the interested owners had approved the annexation. The circuit court also found that appellants' challenge was untimely as it had been filed more than thirty days after the entry of the annexation order by the county judge. As a result, appellants' complaint was dismissed. It is from this dismissal that appellants now appeal.

There are two distinct procedures for circuit-court review of a county-court order annexing territory to a municipality: (1) appealing the county-court's decision to circuit court, and (2) filing a complaint against the annexation in circuit court. *Skinner v. City of El Dorado*, 248 Ark. 916, 454 S.W.2d 656 (1970). If filing a direct complaint in circuit court, as appellants have done here, it must be filed within thirty days of entry of the annexation order. Ark. Code Ann. § 14-40-604(a)(1) (Repl. 1999); *Campbell v. City of Cherokee Village West*, 333 Ark. 310, 969 S.W.2d 179 (1998). According to our supreme court, a complaint challenging annexation in circuit court

is not considered an appeal; rather it is an independent attack on the annexation. *Town of Houston v. Carden*, 332 Ark. 340, 965 S.W.2d 131 (1998).

To be timely, appellants' complaint should have been filed by January 4, 2008. However, the complaint was not filed until July 31, 2008. Accordingly, the circuit court properly rejected consideration of appellants' challenge to the annexation. In an attempt to survive the time bar, appellants tried to reframe their initial argument as a question of subject-matter jurisdiction. However, a challenge to standing does not a jurisdictional deficiency make. Jurisdiction is the power of the court to hear and determine the subject matter in controversy between the parties. *Conner v. Simes*, 355 Ark. 422, 139 S.W.3d 476 (2003). Appellants' alleged failure of standing does not deprive the court of jurisdiction. *Pulaski Cnty. v. Carriage Creek Prop. Owners Improvement Dist. No. 639*, 319 Ark. 12, 888 S.W.2d 652 (1994). Because appellants filed their complaint to challenge the annexation order entered by the county court beyond the time allowed by statute for so doing, the trial-court's decision to dismiss the complaint was not erroneous. We affirm.

Affirmed.

WYNNE and BROWN, JJ., agree.

Spears Huffman, PLLC, by: *Bryan R. Huffman*, for appellants.

Lorraine Hatcher, City Attorney, Bauxite, for appellee.