AFFIRMED; Opinion Filed September 22, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00477-CV

IN THE INTEREST OF B.B. AND A.B., III, CHILDREN

On Appeal from the 304th Judicial District Court
Dallas County, Texas
Trial Court Cause No. 16-00331-W

MEMORANDUM OPINION

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

Mecca and Michael Elliot, the aunt and uncle of B.B. and A.B., appeal the trial court's action striking their petition in intervention. In numerous issues, appellants argue, among other things, the trial court erred by striking their petition because they have standing to intervene. The Texas Department of Family and Protective Services (CPS) filed a letter stating it is unopposed to appellants' position, and no party filed a brief opposing appellants' arguments. We affirm.

A person, such as appellants, seeking conservatorship of a child must have standing to bring suit. *In re I.I.G.T.*, 412 S.W.3d 803, 805 (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.* 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. *Id.* Standing in a suit affecting the parent-child relationship (SAPCR) 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.*

Section 102.003 of the family code provides a list of persons with general standing to file a SAPCR. *See* TEX. FAM. CODE ANN. § 102.003. The statute also confers standing on a relative of the child related within the third degree by consanguinity who can offer satisfactory proof to the court that "the order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development." *See* TEX. FAM. CODE ANN. § 102.004(a)(1).

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. *I.I.G.T.*, 412 S.W.3d at 506.

Neither appellants' petition in intervention nor their brief on appeal cites any provision of the family code that they believe gives them standing to intervene in this suit. After reviewing section 102.003, we conclude appellants are not among the list of persons conferred with general standing to intervene in this suit. We next consider whether appellants have standing pursuant to section 102.004(a)(1).

The trial court appointed LusMarly Rivera as the children's permanent managing conservator. Rivera lives with her husband Dunieski Perez-Dominguez and two teenage daughters. Appellants' petition in intervention states this placement "is contrary to the welfare and best interest of the children and that continuation of the children in this home endangers their physical and emotional well-being." An affidavit from Mecca Elliot is attached to the petition in intervention. Elliot averred that Rivera had her own children removed by CPS at a previous time

and she had a history of substance abuse, which resulted in her discharge from the Navy and felony charges for a controlled substance. Elliot's affidavit states that through other people she heard that Dominguez is involved in drug trafficking and there may be physical violence between the couple.

The trial court heard live testimony about these alleged concerns at the placement hearing on March 22, 2017. Emily McCray, the assigned CPS conservatorship caseworker, testified that CPS conducted a home assessment on Rivera's home in April 2016. Although CPS opposed placing the children with Rivera for several reasons, at the time of the placement hearing, the children's parents supported the placement.

McCray testified Rivera used drugs in 2005. In December 2009, she was charged with unlawful possession with intent to deliver a controlled substance, which was methamphetamine, for which she received deferred adjudication. Rivera completed the terms of the deferred adjudication and the case was dismissed. CPS did not request drug testing on Rivera as part of the instant case.

CPS was concerned by Rivera's past mental health issues. In 2001 she was admitted to Green Oaks for manic depression and she attempted suicide in 2002 or 2003. McCray believed Rivera no longer took medication, but did not know whether she should. McCray also did not know whether Rivera had or needed continuing psychiatric care and had not inquired. Rivera's children were removed from her home for neglectful supervision in 2003. The children subsequently were returned to Rivera and continue living with her. Further, McCray testified Rivera's ex-husband may have been violent and she had alcoholism "some time ago." However, there is no evidence of domestic violence in her current marriage.

McCray also testified Rivera's references were all positive, she works from home and would not need childcare for B.B. and A.B., and her household income exceeds expenses. When

asked whether Rivera appears "to genuinely want the children in the home and that the family was physically, emotionally, and financially capable of caring for the children," McCray confirmed that she did.

At the conclusion of the placement hearing, the trial court found the criminal history and mental health history were remote and there is no evidence that either is recurring. It also found there is no evidence of further criminal or legal problems, including with respect to the removal of Rivera's children. The court concluded none of CPS's concerns pose any danger to B.B. and A.B.

Drawing every reasonable inference supported by the record in favor of the trial court's order striking the intervention, we conclude appellants failed to plead and establish that they have standing to file an original suit requesting managing conservatorship because the children's present circumstances would significantly impair their physical health or emotional development. Because appellants failed to establish they have standing, the trial court did not err by striking their petition in intervention.

We need not consider appellants' other arguments. *See* TEX. R. APP. P. 47.1.

We affirm the trial court's order.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

170477F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF B.B. AND A.B., III, CHILDREN

No. 05-17-00477-CV

On Appeal from the 304th Judicial District Court, Dallas County, Texas
Trial Court Cause No. 16-00331-W.
Opinion delivered by Justice Stoddart.
Justices Lang and Myers participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 22nd day of September, 2017.