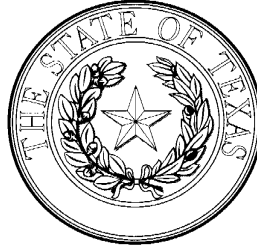


Opinion issued June 30, 2022



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-21-00016-CV

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**ASHLEY ALLEN, INDIVIDUALLY AND AS NEXT FRIEND OF Z.A. AND  
A.A., MINORS; LEAH ALSADI, INDIVIDUALLY AND AS NEXT FRIEND  
OF G.A., A MINOR; MONA BRADLEY, INDIVIDUALLY AND AS NEXT  
FRIEND OF A.W., A MINOR; CHRISTEN GLAZENER, INDIVIDUALLY  
AND AS NEXT FRIEND OF C.G., A MINOR; SHAUNA STEWART,  
INDIVIDUALLY AND AS NEXT FRIEND OF S.S., A MINOR; TAMMY  
WOLVEN, INDIVIDUALLY AND AS NEXT FRIEND OF T.W., A MINOR,**  
Appellants

V.

**TEXAS CHILDREN'S HEALTH PLAN, Appellee**

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**On Appeal from the 55th District Court  
Harris County, Texas  
Trial Court Case No. 2020-74002**

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## **O P I N I O N**

The trial court granted Texas Children's Health Plan's plea to the jurisdiction and dismissed the appellants' suit for lack of subject-matter jurisdiction. We affirm.

### **BACKGROUND**

The Texas Health and Human Services Commission or HHSC created the STAR Kids Program, which is funded in part by the federal government, to provide healthcare for disabled and sick children eligible for Medicaid benefits. The HHSC has contracted with Texas Children's Health Plan, a managed care organization or MCO, to provide services under the STAR Kids Program. We will refer to this particular contract as the STAR Kids Contract or Contract.

Texas Children's Health Plan, in turn, contracts with healthcare providers to provide services to the children in the STAR Kids Program. Apple Homecare Medical Supply, Inc. used to be one of the providers within the Plan's network.

In 2018, Texas Children's Health Plan terminated Apple Homecare Medical Supply from the Plan's provider network. Apple Homecare Medical Supply challenged this decision. In the resulting arbitration, an arbitrator ruled that the Plan had lawfully terminated Apple Homecare Medical Supply from the provider network based on false statements Apple Homecare Medical Supply had made to parents of the children in the STAR Kids Program.

In 2020, a Harris County District Court confirmed the arbitration award. Apple Homecare Medical Supply did not appeal from that judgment.

But afterward, the appellants, seven children in the STAR Kids Program and their next friends, sued Texas Children's Health Plan to enjoin it from requiring them to switch to a provider other than Apple Homecare Medical Supply, from which they have obtained medical equipment, supplies, and services. The appellants allege that requiring them to switch providers is a breach of the STAR Kids Contract, which they are entitled to enforce as third-party beneficiaries.

Texas Children's Health Plan filed a plea to the jurisdiction, arguing that the trial court lacked subject-matter jurisdiction to hear the appellants' suit because they are not third-party beneficiaries of the STAR Kids Contract and therefore lack standing to sue for an alleged breach of the Contract. The trial court granted the Plan's plea and dismissed the suit for lack of jurisdiction.

The appellants now appeal from the trial court's jurisdictional dismissal.

## **DISCUSSION**

The appellants argue the trial court erred in dismissing their suit for lack of jurisdiction. They maintain they have standing as third-party beneficiaries to sue Texas Children's Health Plan for its alleged breach of the STAR Kids Contract.

## Standard of Review

Whether someone is a third-party beneficiary of a contract and can sue for the breach of its terms is a question of standing. *See, e.g., S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 306–08 (Tex. 2007) (per curiam) (holding plaintiffs were not third-party beneficiaries of contract and thus lacked standing to sue for breach and dismissing suit for lack of jurisdiction). We review questions of standing de novo. *Farmers Tex. Cty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 240 (Tex. 2020).

## Applicable Law

In general, the benefits and burdens of a contract belong solely to the contracting parties. *First Bank v. Brumitt*, 519 S.W.3d 95, 102 (Tex. 2017). Third-party beneficiaries are an exception to this general rule. *Id.* If noncontracting parties qualify as third-party beneficiaries, they may sue for breach of the contract. *Id.*

Unless a statute or other legal rule provides otherwise, a person's status as a third-party beneficiary depends solely on the contracting parties' intent. *Id.* When, as here, a contract is unambiguous, we ascertain the contracting parties' intent from the words of the contract, which we interpret as a matter of law. *Id.* at 102, 105–07. As with any other question concerning the meaning of a contract, we interpret it as a whole. *Id.* at 102. We consider the entire contract and give effect to all its provisions so none is made meaningless. *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011). We cannot look to extrinsic evidence to add to or alter the terms of an

unambiguous contract, including when deciding whether it confers third-party beneficiary status on noncontracting parties. *First Bank*, 519 S.W.3d at 109–10.

Contracts often benefit noncontracting parties. *Id.* at 104. Likewise, the contracting parties are often aware that their contractual performance will benefit noncontracting parties. *Id.* But these circumstances—benefit and awareness of the benefit—do not make the noncontracting parties third-party beneficiaries. *Id.* Even if noncontracting parties are directly affected by the contracting parties’ performance or have a substantial interest in the contract’s enforcement, these circumstances do not make these noncontracting parties third-party beneficiaries of the contract. *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 421 (Tex. 2011).

To confer third-party beneficiary status, a contract must show that the contracting parties intended to secure a benefit to the third party and entered the contract directly for the third party’s benefit. *First Bank*, 519 S.W.3d at 102. Moreover, the contract must show that the contracting parties intended to grant the third party the right to enforce the contract in the event of a breach. *Id.* at 102, 105.

A contract can expressly disclaim the intent to create third-party beneficiaries. *Id.* at 103. But the absence of an express disclaimer is not dispositive. *Id.* A contract’s failure to expressly name noncontracting parties as third-party beneficiaries is also not dispositive. *City of Houston v. Williams*, 353 S.W.3d 128, 145 (Tex. 2011).

We presume a contract does not confer third-party beneficiary status on noncontracting parties. *First Bank*, 519 S.W.3d at 103. To overcome this presumption, the contract must express an intent to make a noncontracting party a third-party beneficiary in clear and unequivocal language. *Id.* Because clear and unequivocal language is required, third-party beneficiary status cannot be implied. *Id.* If the contract's language leaves any doubt about the parties' intent, this doubt must be resolved against the recognition of would-be third-party beneficiaries. *Id.*

A noncontracting party suing for breach of contract as a third-party beneficiary bears the burden of demonstrating this status. *Id.* at 102. He cannot carry this burden based on a mere description of the contract's purpose or intended use. *Jody James Farms v. Altman Grp.*, 547 S.W.3d 624, 635 (Tex. 2018). To qualify as a third-party beneficiary, he must benefit from the contract more than incidentally. *Lomas*, 223 S.W.3d at 306. He must be either a donee or creditor beneficiary. *Id.* One is a donee beneficiary if the performance promised to him will come as a pure donation. *Id.* One is a creditor beneficiary if the promised performance will come to satisfy a duty or enforceable commitment owed to him by the promisee. *Id.*

## **Analysis**

### ***Third-Party Beneficiary Status and Standing***

The appellants initially suggest that it is debatable whether the issue of third-party beneficiary status implicates standing and subject-matter jurisdiction or is

merely a potential defense on the merits. However, our Supreme Court has held that when a person is not a third-party beneficiary of a contract, he lacks standing to sue under the contract and the trial court lacks subject-matter jurisdiction to hear his suit. *Lomas*, 223 S.W.3d at 306–08; *see also Data Foundry v. City of Austin*, 620 S.W.3d 692, 697 (Tex. 2021) (stating Court held in *Lomas* that “plaintiffs failed to demonstrate standing as third-party beneficiaries”); *Williams*, 353 S.W.3d at 145–49 (holding former firefighters were third-party beneficiaries of contracts negotiated on their behalf by their union and thus had standing to sue under these contracts).

We acknowledge that our court’s decisions on this subject are not consistent. For example, in *Schlein v. Griffin*, we stated that third-party beneficiary status goes to capacity, not standing. No. 01-14-00799-CV, 2016 WL 1456193, at \*5 (Tex. App.—Houston [1st Dist.] Apr. 12, 2016, pet. denied) (mem. op.). But some of our earlier decisions are to the contrary. *E.g.*, *City of Houston v. Guthrie*, 332 S.W.3d 578, 595, 599–600 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (applying *Lomas* and holding that parties failed to allege facts sufficient to establish standing to sue under contracts and that trial court erred in denying corresponding plea to jurisdiction); *Cassidy v. TeamHealth*, No. 01-08-00324-CV, 2009 WL 2231217, at \*3 (Tex. App.—Houston [1st Dist.] July 23, 2009, pet. denied) (mem. op.) (holding parties who were neither signatories nor third-party beneficiaries lacked standing to sue under contract and affirming trial court’s order granting plea to jurisdiction).

Notably, our decision in *Schlein* did not reference the Supreme Court's decisions in *Lomas* or *Williams*. Whatever the correct approach may be, we are bound to apply the Supreme Court's most recent decisions on this matter. *See Lubbock Cty. v. Trammel's Lubbock Bail Bonds*, 80 S.W.3d 580, 585 (Tex. 2002) (courts of appeals cannot abrogate or modify supreme court's decisions). Thus, consistent with *Lomas* and the other Supreme Court decisions we have noted, we hold that third-party beneficiary status implicates standing and jurisdiction. We now turn to the parties' dispute about the appellants' standing to sue on the Contract.

### *The STAR Kids Contract's Language*

The Contract consists of several parts, including: Attachment A, which is the STAR Kids Contract Terms and Conditions; and Attachments B-1, B-2, and B-3, which are the HHSC STAR Kids MCO Request for Proposal for the establishment of the STAR Kids Medicaid managed care program. These attachments span well over 400 pages. Though the contract incorporates other documents as well, these other documents are not included in the record or referred to by the parties.

The appellants are not parties to the STAR Kids Contract. Nor does the Contract expressly confer or disclaim third-party beneficiary status with respect to the appellants or, more generally, children eligible for benefits under the program.

The appellants argue the STAR Kids Contract expresses an intent to make them third-party beneficiaries authorized to enforce alleged breaches of the Contract



because its purpose is to provide eligible children like them with healthcare benefits. In particular, the appellants rely on Section 1.01 of Attachment A, which states that the purpose of the Contract “is to set forth the terms for the MCO’s participation as a managed care organization in the STAR Kids Program administered by HHSC” and that the “MCO will provide comprehensive healthcare services to qualified Program recipients through a managed care system” under the Contract.

But Section 1.01 is general in nature, and another provision of the Contract, Section 1.04, expressly states that the Contract’s introductory provisions, like Section 1.01, “are not intended to expand the scope of the Parties’ obligations under the Contract or to alter the plain meaning of the terms of the Contract.” Even without this express disclaimer, Section 1.01 does not express an intent to make program recipients, like the appellants, third-party beneficiaries in clear and unequivocal language. And the appellants cannot carry their burden to demonstrate they are third-party beneficiaries under the Contract merely by reference to the Contract’s purpose or the intended use of services provided under the Contract. *Jody James Farms*, 547 S.W.3d at 635; *see e.g., Lomas*, 223 S.W.3d at 306–08 (contract under which entity agreed to sell water to city did not make city’s residents third-party beneficiaries even though water sold to city was intended for use by residents).

Notably, Section 12.3(c) of Attachment A addresses claims for breach of contract. It solely contemplates disputes between the HHSC and MCOs. This provision contains no reference to enforcement of the Contract by third parties.

The appellants also rely on several provisions contained in Attachment B-1. A provision of Attachment B-1 entitled “Purpose” identifies the “purpose of this procurement,” or request for proposal, as contracting “with multiple Managed Care Organizations (MCOs) to establish the STAR Kids Medicaid managed care program for children and young adults with disabilities.” Another provision of Attachment B-1 entitled “Mission Statement” provides that the “HHSC’s mission is to provide individually appropriate Medicaid managed care services to children and young adults with disabilities,” and it identifies multiple objectives, including to:

1. Coordinate care across service arrays;
2. Improve quality, continuity, and customization of care;
3. Improve access to care and provide person-centered Health Homes;
4. Improve ease of program participation for Members, MCOs, and Providers;
5. Improve Provider collaboration and integration of different services;
6. Improve Member outcomes to the greatest extent achievable;
7. Prepare young adults for the transition to adulthood;
8. Foster program innovation; and
9. Achieve cost efficiency and cost containment.

A third provision entitled “Mission Objectives” states that to accomplish the HHSC’s mission and achieve the preceding objectives, the “HHSC will prioritize desired outcomes and benefits for the STAR Kids population and will focus its monitoring efforts on the MCO’s ability to provide satisfactory results.”

But like the Contract’s statement of purpose, the provisions contained in Attachment B-1 do not express an intent to make program recipients, such as the appellants, third-party beneficiaries in clear and unequivocal language. While the purpose of the program is to provide services for children eligible for benefits, nothing in the preceding provisions suggests an intent to confer on these children, or their legal representatives, a right to sue under the Contract. On the contrary, these provisions indicate that the HHSC will represent the children’s interests. As noted, Attachment B-1 states the HHSC, not the children, “will prioritize desired outcomes and benefits for the STAR Kids population,” and similarly specifies that the HHSC, rather than others, will monitor “the MCO’s ability to provide satisfactory results.”

Essentially, the appellants claim the relevant MCO—appellee Texas Children’s Health Plan—has not provided satisfactory results, and they seek to sue it for these unsatisfactory results as a breach of the STAR Kids Contract. But the very provisions on which the appellants rely indicate that the HHSC, not those who benefit from the program, will set program priorities and police the results. In sum,

the provisions referenced by the appellants not only do not express an intent to make them third-party beneficiaries, these provisions refute any such intent.

Other provisions of Attachment B-1 on which the appellants rely reinforce this view of the Contract. For example, in a section entitled “Quality,” the Contract states the “HHSC is accountable to Texans for ensuring that all Members receive quality services in the most efficient and effective manner possible.” Like the preceding provisions, this one indicates that the HHSC bears the responsibility for ensuring the quality of the program services provided, subject to the oversight exercised by citizens of the State through their elected officials. Nothing about this language indicates an intent to create third-party beneficiaries.

Furthermore, the appellants overlook other provisions of Attachment B-1 that reaffirm the view that the HHSC, not private litigants, ensures that MCOs, like Texas Children’s Health Plan, fulfill their contractual obligations under the STAR Kids Contract. A provision of Attachment B-1 entitled “Remedies and Liquidated Damages,” which echoes Section 12.01 of Attachment A to the Contract, states:

All areas of responsibility and all requirements of the MCO in the Contract will be subject to performance evaluation by HHSC. Any and all responsibilities or requirements not fulfilled may have remedies, and HHSC may assess damages, including liquidated damages.

While dual-enforcement schemes exist in which both the State and private litigants enforce rights, neither this provision nor any other in the Contract indicates that the

HHSC and Texas Children's Health Plan intended to create such an arrangement, let alone expresses this intent in clear and unequivocal language.

Similarly, another provision of Attachment B-1 entitled "Administration and Contract Management" provides that an "MCO must comply, to the satisfaction of HHSC, with all provisions set forth in this Contract." Still another entitled "Performance Measurement" states an "MCO must provide to HHSC or its designee all information necessary to analyze the MCO's provision of quality care to Members using measures to be determined by HHSC." Thus, while the Contract's general purpose is to provide eligible children, like the appellants, with specified program services, the Contract's provisions repeatedly emphasize that the HHSC occupies the role of ensuring compliance with contractual obligations.

This remains true with respect to situations in which an MCO terminates the contract of a network provider, like Apple Homecare Medical Supply. A provision of Attachment B-1 entitled "Termination of Provider Contracts" states the "MCO must notify HHSC within five Days after termination of a Network Provider contract that (1) impacts more than 10% of its Members or (2) impacts more than 10% of its Network for that provider type for that Service Area and Program." So, once again, the Contract places the HHSC in the role of supervising MCOs, like Texas Children's Health Plan. The Contract does not suggest children receiving benefits have a like supervisory role when an MCO ends a provider contract.

The lone provisions of Attachment B-1 that address a right of recourse on the part of program recipients, like the appellants, concern the “Member Complaint and Appeal System.” These provisions require an MCO to “develop, implement, and maintain a Member Complaint and Appeal System that complies with the requirements in applicable federal and state laws and regulations, including 42 C.F.R. § 431.200, 42 C.F.R. Part 438, Subpart F, ‘Grievance System,’ and the provisions of 1 Tex. Admin. Code Chapter 357 relating to Medicaid MCOs.” But the appellants do not argue that these regulations entitle them to judicial review of Texas Children’s Health Plan’s decision to terminate its own contracts with network providers, like Apple Homecare Medical Supply, whether as third-party beneficiaries or otherwise. Indeed, the appellants do not even refer to the referenced regulations on appeal. Consistent with the referenced regulations, Attachment B-1’s provisions relating to the Member Complaint and Appeal System concern disputes about the denial or limitation of benefits, quality of care or services, accessibility or availability of services, claims processing, and the like. *See* 42 C.F.R. §§ 431.200(a), 431.220(a) (requiring State to provide opportunity for fair hearing under certain circumstances, including denial of benefits and services and failure to act on claims with reasonable promptness); 1 TEX. ADMIN. CODE § 357.3(b)(1) (providing clients of Medicaid-funded services right to appeal certain actions, including denial or reduction of benefits and failure to process claims with reasonable promptness). In

addition, the definitions of the terms “Complaint,” “MCO Internal Appeal,” and “MCO Internal Appeal and Complaint System,” which are contained in Article 2 of the STAR Kids Contract, confirm this understanding of the Member Complaint and Appeal System provisions outlined in Attachment B-1. In sum, the Member Complaint and Appeal System provisions do not contemplate enforcement of the provisions of the STAR Kids Contract itself by program recipients.

Hence, while the appellants emphasize the extensive obligations that Texas Children’s Health Plan bears under the STAR Kids Contract and the way in which the Plan’s performance of these obligations ultimately benefits them, the appellants do not account for the Contract’s repeated indication that the HHSC alone is charged with ensuring compliance with these contractual obligations. The appellants have not identified any language in the Contract that clearly and unequivocally identifies them as third-party beneficiaries who may sue for breach of these obligations.

### ***Texas Caselaw on Third-Party Beneficiaries***

Section 7.01 of Attachment A of the STAR Kids Contract provides that it “is governed by the laws of the State of Texas and interpreted in accordance with those laws.” Because third-party beneficiary status turns on a contract’s language and Texas courts have not previously addressed the Contract at issue, there is no precedent directly on point. But the most analogous case to this one is *Lomas*.

In *Lomas*, a resident of the City of Kingsville and a non-profit association representing other residents sued the South Texas Water Authority. 223 S.W.3d at 305. In their suit, they challenged operating expenses charged by the authority under its contract with the city. *Id.* at 305–06. Because the residents were not parties to this contract, they asserted they could enforce it as third-party beneficiaries. *Id.* at 306.

Under the contract, the authority agreed to furnish treated water to municipal and industrial customers. *Id.* The residents claimed they were charged excessive and discriminatory rates for water compared to users in other municipal districts serviced by the authority. *Id.* The residents claimed that because the water-supply contract between the authority and the city was executed to provide them with a direct benefit—treated water, they were third-party beneficiaries under the contract. *Id.*

Our Supreme Court disagreed. *Id.* at 306–08. The Court noted that the water-supply contract, which provided for the sale of water by the authority to the city, did not mention the residents “in general other than to specify the water’s intended use for sale to municipal and industrial customers.” *Id.* at 306. Accordingly, the Court reasoned, a “mere description of a product’s intended use cannot confer third-party-beneficiary status on intended users, and there [wa]s nothing more in the contract itself upon which third-party-beneficiary status might be based.” *Id.* at 306–07.

The Court acknowledged that, in creating the authority, the Legislature “intended generally to benefit the people of this state.” *Id.* at 307. However, the



Court held that “general beneficence does not create third-party rights.” *Id.* Were the rule otherwise, the Court observed, “every Texan could challenge or seek to enforce any government contract and the presumption against third-party-beneficiary agreements would disappear.” *Id.* Therefore, the Court dismissed the residents’ lawsuit against the authority for lack of subject-matter jurisdiction. *Id.* at 308.

The instant suit is of the same general nature as *Lomas*. The STAR Kids Contract does not refer to the appellants by name. Because the Contract between the HHSC and Texas Children’s Health Plan concerns a Medicaid managed care program, the Contract necessarily refers to the persons who will be program recipients in general. But the Contract’s language does not express an intent to confer third-party beneficiary status on these recipients, and the program’s intended purpose, in and of itself, cannot give them standing to enforce the Contract.

Thus, the principles enunciated in *Lomas* remain apt in this case. When a contract is executed by a governmental entity and another party in the context of a statutory scheme enacted for the public welfare and with the intention of conferring benefits on members of the general public, the recipients of those benefits are not third-party beneficiaries absent express contractual language evidencing this intent because the kind of general beneficence conferred by such a scheme, standing alone, does not create third-party contract rights. *See Lomas*, 223 S.W.3d at 306–07; *see also Jody James Farms*, 547 S.W.3d at 636 (summarizing and applying *Lomas*).

The appellants dispute that *Lomas* is analogous. Instead, they rely on the Supreme Court’s decision in *Williams*. But *Williams* is readily distinguishable.

In *Williams*, 540 former City of Houston firefighters sued the city for underpayment of lump sums owed to them when their employment ended. 353 S.W.3d at 131. One of the issues on appeal was whether the former firefighters had standing to sue as third-party beneficiaries of two meet-and-confer agreements and a collective-bargaining agreement, all three of which were executed by the city and the firefighters’ union, not the firefighters. *Id.* at 131, 145–49. The city had filed a plea to the jurisdiction contesting the firefighters’ standing to sue as third-party beneficiaries in the trial court, which the trial court denied. *Id.* at 132, 149.

The Court held that the former firefighters were third-party beneficiaries under these contracts. *Id.* at 145–49. But in so holding, the Court observed that each of these agreements was negotiated by the union on behalf of its members. *Id.* at 131, 148. These agreements directly guaranteed the firefighters specified benefits, including salary-related and termination-related payments. *Id.* at 146, 148–49. These benefits were “not offered to the world at large as a general beneficence.” *Id.* at 146. Instead, these benefits were limited to the firefighters as part of their employment. *Id.* at 146, 148. In addition to relying on specific provisions of these agreements, which expressed an intent to make the firefighters third-party beneficiaries, the Court further observed that collective-bargaining agreements “are recognized as a type of

third-party beneficiary contract.” *Id.* at 145–49. Accordingly, the Court concluded that the trial court had correctly denied the city’s jurisdictional plea. *Id.* at 149.

Unlike *Williams*, the appellants’ suit does not depend on a contract negotiated by a union on behalf of its members. Instead, the STAR Kids Contract is the kind of contract that *Williams* distinguished—one made as a beneficence to the public at large as part of a governmental program for the public welfare. *See id.* at 146 (stating benefits at issue were “not offered to the world at large as a general beneficence” and instead were limited to defined employees). *Williams* also differs in that the contract at issue in that case guaranteed the very benefit—termination-related pay—the plaintiffs sought to recover in their lawsuit. *Id.* at 146, 148–49. In contrast, the STAR Kids Contract does not guarantee the appellants the right to select which healthcare providers are in Texas Children’s Health Plan’s network in general or the right to insist Apple Homecare Medical Supply in particular be included in that network. As the arbitrator found, Texas Children’s Health Plan had the right to end its contractual relationship with Apple Homecare Medical Supply.

On this record, we hold the appellants have not overcome the presumption against third-party beneficiary status. Thus, they lack standing to sue Texas Children’s Health Plan for an alleged breach of the STAR Kids Contract.

## **CONCLUSION**

Because the appellants lack standing, the trial court did not err in granting Texas Children's Health Plan's plea to the jurisdiction. We affirm the trial court.

Gordon Goodman  
Justice

Panel consists of Justices Kelly, Goodman, and Guerra.