Affirmed and Memorandum Opinion filed March 22, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00967-CV

IN THE INTEREST OF E.G., A MINOR CHILD

On Appeal from the 315th District Court
Harris County, Texas
Trial Court Cause No. 2014-09515

M E M O R A N D U M O P I N I O N

This is an appeal from the dismissal of an original petition for adoption filed by appellant, R.G., the paternal aunt of E.G., a minor child. In three issues, R.G. contends the trial court erred by granting the motion to dismiss filed by appellee, Texas Department of Family and Protective Services ("DFPS") and by granting the motion to strike pleadings filed by the amicus attorney. We affirm.

I. BACKGROUND

On February 24, 2014, R.G. filed her original petition for adoption of the child, stating R.G. "has standing to file this adoption under 102.005(5) of the Texas

Family Code" and she "is not limited from filing this suit under 102.006(c) . . . and this is requesting [sic] an adoption as well as to be named managing conservator." *See* Tex. Fam. Code Ann. §§ 102.005(5), 102.006(c) (West 2014). R.G. asserted that "no court has continuing jurisdiction of this suit." R.G.'s suit was assigned originally to the 257th judicial district court and transferred to the 315th judicial district court, the court which purportedly had signed the decree for termination of parental rights.[1] The trial court appointed an amicus attorney to assist the court in protecting E.G.'s interests. *See id.* § 107.003 (West 2014).

DFPS was named as E.G.'s managing conservator in the suit in which the parental rights of E.G.'s father were terminated. DFPS answered R.G.'s petition for adoption and refused to consent to R.G.'s adoption of E.G., stating it would not be in E.G.'s best interests and would prohibit DFPS from carrying out its responsibilities as managing conservator. Additionally, DFPS filed a motion to dismiss for lack of jurisdiction, urging that R.G. had no standing because she had no "substantial past contact with the child sufficient to warrant standing to do so." *See id.* § 102.005(5).

The amicus attorney filed special exceptions and motion to strike pleadings, seeking dismissal of the adoption petition, asserting that R.G. did not have standing and did not file the modification of managing conservatorship in the court of continuing jurisdiction and within the 90-day statutory deadline set forth in Texas Family Code section 102.006(c). *See id.* §§ 102.005(5), 102.006(c).

The trial court held a hearing, in which R.G. and her attorney, the amicus attorney, DFPS, and the attorney for a couple seeking to adopt E.G. participated.[2]

[1] The record contains only the first page of a "Decree for Termination," reflecting a filing date of November 25, 2013.

[2] Since October 2011, E.G. has resided in the home of the couple seeking her adoption.

The trial court granted DFPS's motion to dismiss and the amicus attorney's motion to strike pleadings, and dismissed R.G's petition for adoption.

II. ANALYSIS

In her first issue, R.G. contends that the trial court erred by dismissing her petition for adoption because she filed her petition for adoption within the 90-day time frame contained in section 102.006(c). *See id.* § 102.006(c). In her second issue, R.G. asserts that the trial court erred because she had "substantial past contact" with the child. *See id.* § 102.005(5). We need not address R.G.'s second issue because, even if she established she met the general standing requirement of section 102.005(5), we conclude that she lacked standing to file her petition for adoption under section 102.006(a). *See id.* § 102.006(c). For the same reason, we need not address R.G.'s third issue directed to her complaint regarding the special exceptions filed by the amicus attorney.

A. Applicable Law and Standard of Review

Section 102.005, entitled "Standing to Request Termination and Adoption," confers standing on an individual who may not have standing under section 102.003 (the more general provision governing standing) and provides: "An original suit[3] requesting only an adoption . . . may be filed by: . . . (5) another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so." *Id.* § 102.005(5). Where, as here, the parent-child relationship has been terminated, section 102.006 limits standing, and provides that "an aunt who is a sister of a parent of the child" may file an "original suit or a suit for modification requesting managing conservatorship of the child not

[3] Texas Family Code section 102.013 provides that a suit for modification is filed under the same docket number as the prior proceeding and a suit for adoption is filed in a new file with a new docket number. *See* Tex. Fam. Code Ann. § 102.013 (West 2014).

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." *See id*. § 102.006(c); *see also In re J.C.*, 399 S.W.3d 235, 239 (Tex. App.—San Antonio 2012, no pet.).

Our review of this timeliness issue turns on the construction of a statute; thus, we apply a *de novo* standard of review. *See In re K.D.H.*, 426 S.W.3d 879, 882 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citing *Johnson v. City of Fort Worth*, 774 S.W.2d 653, 655–66 (Tex. 1989)). When standing has been conferred by statute, the statute provides the appropriate framework for a standing analysis. *Id*. at 883. We review *de novo* whether a person has standing. *See In re Vogel*, 261 S.W.3d 917, 920 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding).

B. Timeliness Issue

Pursuant to section 102.006, R.G. lacked standing to file her petition unless she filed it within the 90-day period in section 102.006(c). Resolution of this issue turns on the date the parent-child relationship was terminated. *See* Tex. Fam. Code Ann. § 102.006(c). When the trial court finds by clear and convincing evidence that the parent-child relationship should be terminated, the court shall render an order terminating the relationship. *See id.* § 161.206(a) (West 2014).

In suits affecting the parent-child relationship, "'render' means the pronouncement by a judge of the court's ruling on a matter." *Id*. § 101.026 (West 2014). "The pronouncement may be made orally in the presence of the court reporter or in writing, including on the court's docket sheet or by a separate written instrument." *Id*. Judgment is rendered "when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced

publicly." *See In re Dep't of Family & Protective Servs.*, 273 S.W.3d 637, 644 (Tex. 2009); *In re R.A.H.*, 130 S.W.3d 68, 70 (Tex. 2004) (quoting *Garza v. Tex. Alcoholic Beverage Comm'n*, 89 S.W.3d 1, 6 (Tex. 2002)) (holding signed judgment takes precedence over docket sheet entry and, because there was no evidence of rendition prior to the date of the judgment, the court did not timely render judgment within the applicable statutory deadline). A trial court's oral pronouncement of its decision terminating a parent-child relationship constitutes the rendition of a final judgment. *See In re Dep't of Family & Protective Servs*., 273 S.W.3d at 644; *In re A.B.*, 125 S.W.3d 769, 774 (Tex. App.—Texarkana 2003, no pet.). In the case of an oral rendition, the judgment is effective immediately, and the signing and entry of the judgment are only ministerial acts. *Dunn v. Dunn*, 439 S.W.2d 830, 832 (Tex. 1969); *Wittau v. Storie*, 145 S.W.3d 732, 735 (Tex. App.—Fort Worth 2004); *Gen. Elec. Capital Auto Fin. Leasing Servs., Inc. v. Stanfield*, 71 S.W.3d 351, 354 (Tex. App.—Tyler 2001, pet. denied).

R.G. contends that her petition was timely filed, asserting that calculation of the 90-day period begins to run from the date the trial court signed the decree of termination. In the trial court, DFPS did not challenge the timeliness of the filing of R.G.'s petition; however, it addresses timeliness in its appellate brief.[4] Standing is a component of subject matter jurisdiction, cannot be waived, and may be raised for the first time on appeal by the parties or by the court sua sponte. *Tex. Ass'n of Bus. v. Tex. Air Control Bd*., 852 S.W.2d 440, 443 (Tex. 1993); *In re A.C.F.H.*, 373 S.W.3d 148, 150 (Tex. App.—San Antonio 2012, no pet.). In its motion to strike, in addition to challenging standing under section 102.005(5), the amicus attorney asserted that R.G.'s petition was one for modification under

[4] In its motion to dismiss, DFPS asserted that the trial court signed a decree of termination of parental rights of E.G.'s father on December 16, 2013, and R.G. filed her petition for adoption on February 24, 2014.

section 156.002, not filed in the proper court and outside the 90-day period in section 102.006(c). *See* Tex. Fam. Code Ann. §§ 102.005(5), 102.006(c); 156.002 (West 2014).

At the hearing on the motion to dismiss and strike, counsel for the couple seeking to adopt E.G. stated that rendition occurred on November 19, 2013, and "Everyone knew that the 90 days began on 11-19." Thus, the attorney for the couple argued that the petition filed February 24, 2014 was untimely. Also, the amicus attorney, who was present at the hearing terminating E.G.'s father's parental rights, recalled that R.G. was also present at the hearing terminating E.G.'s father's parental rights. In addition, at the hearing on the motion to dismiss and strike, the amicus attorney provided her recollection of what occurred at the termination hearing as follows:

> They did not use the word "rendered," as I recall it. I was in court that day. But, the Judge did make his finding — her finding and say that parental rights were terminated based on the introduction of voluntary relinquishments, as I recall. They did not use the word "rendered."

Significantly, none of the other counsel present at the hearing disagreed with or challenged the amicus attorney's recollection that the judge stated at the November 19, 2013 termination hearing that parental rights were terminated. Moreover, at the hearing on the motion to dismiss, R.G.'s counsel did not contest that rendition occurred at the November 19, 2013 termination hearing; rather, R.G.'s counsel argued that the 90-day period for filing the petition for adoption ran from the date that the written order terminating the parent-child relationship was signed, not the date of rendition. In the statement-of-facts section of her appellate brief, R.G. asserted that rendition of the termination of parental rights occurred on November 19, 2013. No appellee has contradicted this statement; indeed, DFPS

agrees with this statement in its brief. Therefore, this court will accept this statement as true. *See* Tex. R. App. P. 38.1(g).

The record reflects R.G. filed her petition for adoption on February 24, 2014, which was more than ninety days from November 19, 2013 when the court rendered final judgment terminating the parent-child relationship. Therefore, we conclude that R.G.'s petition was not filed within the time frame set forth in section 102.006(c). *See* Tex. Fam. Code Ann. § 102.006(c); *In re J.C.*, 399 S.W.3d at 239–240 (holding that section 102.006 does not confer standing, but limits which parties have standing); *In re A.M.*, 312 S.W.3d 76, 85 (Tex. App.—San Antonio 2010, pet. denied) (concluding that trial court did not err in upholding challenge to standing where suit was not timely filed). Because we have determined that R.G. did not file her suit "not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated," R.G. lacked standing under section 102.006(a), and the trial court did not err by dismissing the petition for adoption. We overrule R.G.'s first issue.

Given this conclusion, we need not address R.G.'s second and third issues.

We affirm the trial court order signed November 20, 2014, granting the motion to dismiss and motion to strike pleadings.

/s/ John Donovan
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Donovan.