



**IN THE
TENTH COURT OF APPEALS**

No. 10-09-00376-CV

**IN RE MADELINE MOORE,
BRIAN MOORE, AND TY CLEVINGER**

Original Proceeding

MEMORANDUM OPINION ON REHEARING

Relators Madeline Moore and Brian Moore have filed a motion for rehearing, a supplement to the motion, and a second supplement to the motion that ask us to rehear their first issue because the presently assigned judge subsequently heard and denied their motion to dismiss for lack of jurisdiction. We requested and received a response to the motion for rehearing. In the interest of judicial economy, we grant the motion for rehearing and will address issue one.

Issue one asserts that the trial court lacks jurisdiction because Real-Parties-in-Interest Tracey and Timothy Moore lack standing. The Relators filed a motion to dismiss the underlying proceeding on the basis that the Real Parties lack standing to file

the underlying SAPCR and the trial court thus lacked subject-matter jurisdiction.

The Family Code provides the following for grandparent standing:

(a) In addition to the general standing to file suit provided by Section 102.003, a grandparent, or another relative of the child related within the third degree by consanguinity, may file an original suit requesting managing conservatorship if there is satisfactory proof to the court that:

(1) the order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; ...

TEX. FAM. CODE ANN. § 102.004(a)(1) (Vernon Supp. 2009).

Standing, which is implicit in the concept of subject-matter jurisdiction, is a threshold issue in a custody proceeding. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993); *In re SSJ-J*, 153 S.W.3d 132, 134 (Tex. App.—San Antonio 2004, no pet.). We review a party's legal standing, which is a question of law, under the de novo standard. *Concerned Cmty. Involved Dev., Inc. v. City of Houston*, 209 S.W.3d 666, 670 (Tex. App.—Houston [14th Dist.] 2006, pet. denied), *cert. denied*, --- U.S. ---, 128 S.Ct. 432, 169 L.Ed.2d 261 (2007). We construe the petition in favor of the pleader, and determine whether any evidence in the record supports standing. *Id.* at 671. Standing is determined as of the time that suit was filed in the trial court. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446 n.9.

In re Vogel, 261 S.W.3d 917, 922 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding).

In their petition requesting managing conservatorship, the Real Parties alleged that they have standing because they are the paternal grandparents of R.K.M., the minor child who is the subject of the suit. They further alleged that: R.K.M.'s parents (the Relators) are incapable of adequately caring for him because they take and/or sell "illegal substances such as marijuana;" the Relator Madeline Moore has been arrested and charged with marijuana possession; CPS sought and obtained a voluntary

placement of R.K.M. away from the Relators; R.K.M. was currently in the possession of Michael McCartney, the maternal grandfather; and the “child’s present environment with [Relators] and the present circumstances of the child being left with [Relators] would significantly impair and risk the child’s physical health and/or emotional development.”

At the hearing for temporary orders on the Real Parties’ petition, there was evidence that CPS investigated the Relators on allegations of neglect (that R.K.M. was underweight and had diaper rash) and marijuana use by R.K.M.’s mother, that R.K.M.’s mother cared for him while under the influence of marijuana, that CPS found evidence of marijuana use and neglect, that R.K.M.’s mother had been arrested for marijuana possession, and that CPS voluntarily placed R.K.M. with McCartney and the Relators were living in a travel trailer behind McCartney’s home and helping care for R.K.M.

Given this evidence, we conclude that the trial court reasonably could have found that R.K.M.’s circumstances would significantly impair his physical health or emotional development. *See Vogel*, 261 S.W.3d at 922. Based on the pleadings and the evidence, we hold that the Real Parties established standing to petition for managing conservatorship of their grandson, and we deny the petition for writ of mandamus as to issue one.¹ *See id.*

REX D. DAVIS
Justice

¹ In their “Second Supplement in Support of Motion for Rehearing,” the Relators request us to grant mandamus relief on the assigned judge’s denial of their “Motion to Void the Orders of Judge Robert M. Stem.” The Relators requested similar relief in issue five, and in our original opinion, we summarily denied that issue. We summarily deny this similar request on rehearing.

Before Chief Justice Gray,
Justice Reyna, and
Justice Davis

(Chief Justice Gray concurs in the denial of the petition for writ of mandamus.

He does not join the opinion. A separate opinion will not issue.)

Motion for rehearing granted; petition denied as to issue one

Opinion delivered and filed July 7, 2010

[OT06]