



**IN THE
TENTH COURT OF APPEALS**

No. 10-17-00159-CV

**MARY CATHERINE MIZE HICKS,
FOR AND ON BEHALF OF CHRISTIAN
HERITAGE FOUNDATION, INC.,
A TEXAS NONPROFIT CORPORATION,**

Appellant

v.

CHARLES GARRETT,

Appellee

**From the 18th District Court
Johnson County, Texas
Trial Court No. DC-C201700107**

MEMORANDUM OPINION

Appellant Mary Catherine Mize Hicks, For and On Behalf of Christian Heritage Foundation, Inc., a Texas Nonprofit Corporation, challenges the trial court's order granting Appellee Charles Garrett's plea to the jurisdiction. We affirm.

Background

The underlying facts relevant to this appeal are not disputed. Hicks was at one time the Chairman of the Board of Directors of Christian Heritage Foundation, Inc. (the Foundation), a Texas nonprofit corporation that was founded by her father, Walter Mize. The Foundation was established to help churches in Johnson County with evangelism and benevolence. The Foundation's articles of incorporation were later amended to expand the stated purpose to the broader "Christian benevolence and outreach," although the Foundation continued to primarily support the churches of Johnson County.

Hicks initiated this lawsuit as an attempt to correct what she believed were financial irregularities committed by Garrett, the Foundation's Chief Executive Officer. Hicks asserts a cause of action for breach of fiduciary duty and seeks an accounting and monetary damages for and on behalf of the Foundation. Hicks includes no individual claims and alleges no personal injury.

At the time Hicks filed suit, she was no longer either Chairman of the Board or a Member of the Board of the Foundation. While Hicks filed this suit ostensibly on behalf of the Foundation, she had no authorization to do so from the Board of Directors.

Garrett filed a plea to the jurisdiction challenging Hicks's standing, which the trial court granted after a hearing.

Issues

Hicks raises four issues. Because the resolution of Issue One is dispositive of this case, we do not address the other issues. Hicks asserts the following:

Under current common law, the Office of the Attorney General (“OAG”) is solely authorized and responsible for protecting the public interest in charity. Can special standing to sue for and on behalf of a privately funded, public-interest, nonprofit be bestowed on Appellant where Appellant is more than a mere member of the public and the Office of the Attorney General has declined to investigate?

Discussion

The appellate court views the question of standing de novo. *Farmers Tex. Cty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 240 (Tex. 2020).

This is because standing is a component of subject matter jurisdiction. *See Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005) (citations omitted) (“Without standing, a court lacks subject matter jurisdiction to hear the case.”); *see also* W. WENDELL HALL & RYAN G. ANDERSON, *Standards of Review in Texas*, 50 ST. MARY’S L.J. 1099, 1244 (2019) (citations omitted) (“The de novo standard of review applicable to subject-matter jurisdiction applies to standing as well. . . .”). Because a plea to the jurisdiction raises a question of standing, we also review a plea to the jurisdiction de novo. *See Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 929 (Tex. 2010) (citations omitted) (“We review a trial court’s order granting or denying a plea to the jurisdiction de novo.”). In applying a de novo standard of review to a standing determination, reviewing courts “construe the pleadings in the plaintiff’s favor. . . .” *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018) (citations omitted).

...

Standing is a threshold requirement to maintaining a lawsuit. *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012) (citations omitted) (“Standing is a constitutional prerequisite to suit. A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert

it.”). To establish standing in Texas, a plaintiff must allege “a concrete injury . . . and a real controversy between the parties that will be resolved by the court.” *Id.* at 154. Specifically, the plaintiff must allege a threatened or actual injury—it may not be hypothetical. *See [Allstate Indem. Co. v.] Forth*, 204 S.W.3d [795] at 796 [(Tex. 2006)]; *see also DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) (citations omitted) (“For standing, a plaintiff must be personally aggrieved, his alleged injury must be concrete and particularized, actual or imminent, not hypothetical.”).

In determining whether a plaintiff has alleged a concrete injury sufficient to meet the standing requirement, courts look to the plaintiff’s pleadings. *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (citation omitted). . . . Because the standing determination is made by looking to the plaintiff’s pleadings, the mere fact that a plaintiff may ultimately not prevail on the merits of the lawsuit does not deprive the plaintiff of standing. *Inman*, 252 S.W.3d at 305 (“A plaintiff does not lack standing simply because he cannot prevail on the merits of his claim; he lacks standing because his claim of injury is too slight for a court to afford redress.”).

Id. at 240-41.

In analyzing whether standing exists, we focus on whether a party has a “justiciable interest” in the outcome of the lawsuit, “such as when it is personally aggrieved or has an enforceable right or interest.” *Hatchett v. W. Travis Cty. Pub. Util. Agency*, 598 S.W.3d 744, 749 (Tex. App.—Austin 2020, pet. filed) (quoting *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005)). The plaintiff must be personally injured, pleading facts that demonstrate that she (rather than a third party or the public at large) suffered an injury. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 155 (Tex. 2012).

Hicks argues that she should be afforded standing to protect the interests of the Foundation because the Attorney General’s Office declined to investigate her claims of

malfeasance. Hicks makes a public policy argument but provides no legal basis for her position that she should be entitled to somehow step into the attorney general's shoes.

The Attorney General has the authority to investigate the activities and operations of nonprofit corporations and take action where appropriate. TEX. BUS. ORGS. CODE ANN. §§ 12.151-156; *see also Nacol v. State*, 792 S.W.2d 810, 812 (Houston [14th Dist.] 1990, writ denied); *Gray v. Saint Matthews Cathedral Endowment Fund, Inc.*, 544 S.W.2d 488, 490 (Tex. Civ. App.—Texarkana 1976, writ ref'd n.r.e.) (attorney general is only party capable of vindicating public's rights in connection with public charitable trust). One of the reasons for placing this authority in the hands of the Attorney General is to protect charitable organizations from undue harassment by the public at large or those with no special interest. *Gray*, 544 S.W.2d at 490.

While the Attorney General may be the appropriate party to investigate any improprieties regarding the Foundation, a private party is not precluded from bringing an action on behalf of a nonprofit organization so long as that party has standing. *See Carmichael v. Tarantino Properties, Inc.*, No. 14-18-01086-CV, — S.W.3d —, 2020 WL 2991649 (Tex. App.—Houston [14th Dist.] June 4, 2020, no pet. h.) (slip op.) (Business Organizations Code identifies those authorized to sue on behalf of nonprofit corporation); *see also BCCC Soc. Members Ass'n v. Barton Creek Resort LLC*, No. 03-18-00708-CV, 2020 WL 2990577 (Tex. App.—Austin June 3, 2020, pet. filed) (mem. op.); *Tran v. Hoang*, 481 S.W.3d 313 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). If the

legislature has conferred standing through statute, “judge-made criteria regarding standing do not apply and the analysis is a straight statutory construction of the relevant statute to determine upon whom the Texas Legislature conferred standing.” *BCCC Soc. Members*, 2020 WL 2990577, at *2 (quoting *Texas Ass’n of Bus. v. City of Austin*, 565 S.W.3d 425, 433 (Tex. App.—Austin 2018, pet. denied)). Hicks does not argue that she has standing under the Business Organizations Code or any other statute.

Hicks argues that she has a “special interest” beyond the general public due to her history with the Foundation, citing a number of cases from other jurisdictions in support of her assertion that she has standing to bring this suit. However, the cases do not support her position as each of the cases identifies a special interest beyond that of the general public as a basis for standing. See *Stern v. Lucy Webb Hayes Nat’l Training Sch.*, 367 F.Supp. 536 (D.D.C. 1973), supplemented by 381 F.Supp. 1003 (D.D.C. 1974) (patients receiving care from hospital were directly affected by hospital’s actions); *Jones v. Grant*, 344 So.2d 1210 (Ala. 1977), superseded by statute, as recognized in *Boys & Girls Clubs of S. Alabama, Inc. v. Fairhope-Point Clear Rotary Youth Programs, Inc.*, 114 So.3d 817, 821 (Ala. 2012) (students had standing as beneficiaries of charitable trust); *San Diego Cty. Council, Boy Scouts of America v. City of Escondido*, 14 Cal.App.3d 189, 92 Cal.Rptr. 186 (Cal. Ct. App. 1971) (county council of Boy Scouts of America had standing to enforce trust as charged under articles of incorporation and bylaws with duty to represent and protect its districts and scouts within its districts); *Hooker v. Edes Homes*, 579 A.2d 608 (D.C. 1990) (plaintiffs were

members of intended class of beneficiaries of trust); *Lopez v. Medford Cmty. Center, Inc.*, 384 Mass. 163, 424 N.E.2d 229 (1981) (plaintiffs had standing because were denied membership); *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752 (N.Y. 1985) (plaintiffs had standing as beneficiaries of charitable trust).

Even assuming that Hicks may assert standing despite a lack of statutory authorization, she has failed to identify any greater interest in the outcome of this case than the general public. As previously noted, she is no longer the Chairman or a member of the Board of Directors, nor is she a beneficiary of the Foundation. Hicks has also failed to identify a personal injury that she has or will suffer that is different from that of any member of the general public. As noted, Hicks sues only on behalf of the Foundation and alleges damage only to the foundation.

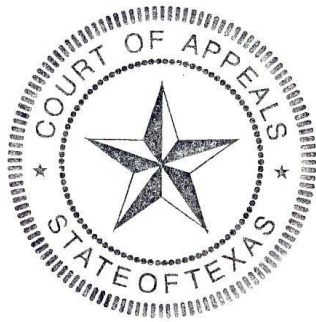
The trial court did not err in determining that Hicks has no standing to pursue this lawsuit and in granting Garrett's plea to the jurisdiction. Hicks's first issue is overruled. As Hicks has no standing, we need not address her remaining issues.

Conclusion

As we have overruled Hicks's first issue and determined that the trial court did not err in granting Garrett's plea to the jurisdiction, we affirm the judgment of the trial court.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins¹
Judgment affirmed
Opinion delivered and filed July 29, 2020
[CV06]



¹ The Honorable Al Scoggins, Senior Justice, sitting by assignment of the Chief Justice of the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. §§ 74.003, 75.002, 75.003.