IN THE
TENTH COURT OF APPEALS

No. 10-20-00067-CV

IN RE M.S.J.

Original Proceeding

MEMORANDUM OPINION

In this original proceeding, relator, Michael Storm Jaouni, complains about the trial court's denial of two petitions for a writ of habeas corpus and a plea to the jurisdiction filed by relator in his suit seeking custody of his son, M.S.J. We conditionally grant relator's petition for writ of mandamus, in part.

I. BACKGROUND

The procedural background in this proceeding is convoluted and complex. On January 29, 2019, relator commenced this matter by filing an original petition in suit affecting the parent-child relationship ("SAPCR"), noting that the biological mother of

M.S.J. is deceased, and arguing that he is the biological father of M.S.J. and that it is in the best interest of M.S.J. that relator be named sole managing conservator of the child.

On February 20, 2019, Heidi Luree Pierce and Joseph Wayne Pierce, the maternal great aunt and uncle of M.S.J., filed an original counterpetition in relator's suit, requesting that they be appointed as sole managing conservators of M.S.J., and asserting that they have standing under section 102.004 of the Family Code and that relator has not been adjudicated as the father. *See* TEX. FAM. CODE ANN. § 102.004(b). Thereafter, on February 25, 2019, DeeAnna Tortorelli, another maternal great aunt of M.S.J., filed an amended petition in intervention in the pending suit. In her petition in intervention, Tortorelli requested that she be appointed sole managing conservator of M.S.J. and alleged that appointment of relator as joint managing conservator would not be in the best interest of the child because appointment would significantly impair the child's physical health or emotional development. Like the Pierces, Tortorelli claimed standing in this matter under section 102.004(b) of the Family Code. *See id.*

Subsequently, on April 24, 2019, relator filed an amended SAPCR, wherein he contended that appointment of the Pierces or Tortorelli as joint managing conservators would not be in the best interest of the child. The Pierces and Tortorelli responded by filing a motion for genetic testing to determine whether relator is the biological father of M.S.J. The trial court granted the motion and later entered a temporary order requiring relator to submit to drug testing.

In the meantime, on June 26, 2019, relator filed an original answer to the Pierces' counterpetition, as well as a plea to the jurisdiction, arguing that the Pierces and Tortorelli lack standing to be appointed as conservators of M.S.J. because they are not related to the child within the third degree of consanguinity, as required by sections 102.003(a) and 102.004 of the Family Code and as defined in section 573.023 of the Texas Government Code. *See id.* §§ 102.003(a), 102.004; *see also* TEX. GOV'T CODE ANN. § 573.023.

On July 30, 2019, counsel for the Pierces and Tortorelli filed a petition in intervention in the suit on behalf of Daphne Dezelle, the maternal aunt of the child. In this filing, Dezelle asserted that she has standing to intervene under section 102.004(a)(1) and 102.004(b) of the Family Code. *See* TEX. FAM. CODE ANN. § 102.004(a)(1), (b). Dezelle requested that she be appointed sole managing conservator of M.S.J. and that she have the right to determine the primary residence of the child. Dezelle also alleged that appointment of relator as joint managing conservator would significantly impair the child's physical health or emotional development.

In response to the latest filing, on July 31, 2019, relator filed an amended plea to the jurisdiction to add Dezelle as a counter-respondent and re-assert his standing claims against the Pierces and Tortorelli, as well as request attorney's fees, expenses, and costs from the Pierces, Tortorelli, and Dezelle. The trial court set relator's amended plea to the jurisdiction for a hearing.

Relator also filed an amended petition for a writ of habeas corpus on July 31, 2019, contending that he is the biological father of M.S.J. and that the Pierces, Tortorelli, and Dezelle are illegally restraining the child by not releasing the child into relator's custody. Relator alleged that the continued possession of M.S.J. by the Pierces, Tortorelli, and Dezelle creates a serious and immediate threat to M.S.J.'s physical and emotional well-being. On August 8, 2019, the trial court heard and orally denied relator's amended petition for a writ of habeas corpus.

Following the August 8, 2019 hearing, relator filed a motion to strike Dezelle's petition in intervention, arguing that she lacks standing under sections 102.003 and 102.004 of the Family Code because Dezelle "has not had substantial past contacts with the child which would allow for her to intervene in this case." *See id.* §§ 102.003-.004. Concurrently, relator filed a motion to strike Tortorelli's petition in intervention on the ground of her lacking standing, as alleged in his pleas to the jurisdiction, and a motion to adjudicate parentage.

On October 28, 2019, relator filed a motion to adjudicate parentage. After a hearing conducted on November 19, 2019, the trial court entered a decree adjudicating relator as the biological father of M.S.J. Upon being adjudicated the biological father of M.S.J., on November 19, 2019, relator filed a second petition for a writ of habeas corpus, stating that: (1) as the biological father, he has the right to exclusive possession of M.S.J.; (2) advancing substantially similar arguments against the Pierces, Tortorelli, and Dezelle as he

advanced in his first habeas petition; and (3) seeking a writ of attachment of the person of M.S.J. A day later, the Pierces filed an amended counterpetition, and Tortorelli and Dezelle filed an amended petition for intervention, seeking to have Tortorelli appointed managing conservator of M.S.J., or in the alternative, have the Pierces or Dezelle appointed managing conservator of M.S.J. At the same time, Tortorelli filed a motion for additional temporary orders and for leave to intervene.

By December 2019, another trial judge had taken over this matter. On December 9, 2019, the trial court entered temporary orders allowing M.S.J. to remain in Tortorelli's custody and deferred making any final custody decisions regarding M.S.J.

Subsequently, on January 9, 2020, after a hearing, the trial court denied relator's second petition for a writ of habeas corpus, signed a written order denying relator's first petition for a writ of habeas corpus, and orally denied relator's plea to the jurisdiction. On February 13, 2020, the trial court entered new temporary orders naming the Pierces, Tortorelli, and Dezelle as temporary managing conservators of M.S.J. with Tortorelli having the right to designate the primary residence of the child, and relator as temporary possessory conservator. This original proceeding followed.

II. STANDARD OF REVIEW

Mandamus is an extraordinary remedy, available only when the relator can show both that: (1) the trial court clearly abused its discretion or violated a duty imposed by law; and (2) there is no adequate remedy by way of appeal. *In re Ford Motor Co.*, 165

S.W.3d 315, 317 (Tex. 2005) (per curiam) (orig. proceeding); *see Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). A trial court abuses its discretion when it fails to analyze or apply the law correctly to the facts. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d at 712; *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam).

III. ANALYSIS

In his mandamus petition, relator complains that the trial court abused its discretion by denying both of his petitions for a writ of habeas corpus and his plea to the jurisdiction challenging the standing of real parties in interest.

A. Relator's Petitions for a Writ of Habeas Corpus

At the outset, we address the trial court's written rulings on his petitions for a writ of habeas corpus. Mandamus may issue to compel a government officer to perform a ministerial duty. *See Walker*, 827 S.W.2d at 839. Mandamus has also been used as a vehicle to compel enforcement of a relator's right to possession of a child in a habeas-corpus proceeding. *See In re Guerrero*, 440 S.W.3d 917, 922 (Tex. App.—Amarillo 2014, orig. proceeding) (citing *Armstrong v. Reiter*, 628 S.W.2d 439, 440 (Tex. 1982) (orig.

proceeding); *In re Kubankin*, 257 S.W.3d 852, 858 (Tex. App.—Waco 2008, orig. proceeding)); *see also* TEX. FAM. CODE ANN. § 152.376.

A district court must hear a petition for a writ of habeas corpus concerning the proper legal custodian of a child and make its determination solely on the basis of who, at that time, has the legal right to custody. *In re Jones*, 263 S.W.3d 120, 123 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (citing *Greene v. Schuble*, 654 S.W.2d 436, 438 (Tex. 1983) (orig. proceeding)). In reviewing the trial court's decision on the petition for a writ of habeas corpus, we first look to whether the denial of habeas relief was an abuse of discretion or a failure to perform a ministerial duty. Absent evidence of a dire emergency, the trial court is required to issue a writ of habeas corpus once the relator has demonstrated the bare legal right to possession of the child; at that point, issuance of the writ should be automatic, immediate, and ministerial. *See Schoenfeld v. Onion*, 647 S.W.2d 954, 955 (Tex. 1983) (orig. proceeding) (per curiam); *see also In re Kubankin*, 257 S.W.3d at 857; *In re deFilippi*, 235 S.W.3d 319, 322 (Tex. App.—San Antonio 2007, orig. proceeding) (per curiam). In other words, once relator has established his legal right to possession of the child, the trial court's authority to deny habeas relief becomes very limited. *See In re deFilippi*, 235 S.W.3d at 323; *see also In re Lau*, 89 S.W.3d 757, 759 (Tex. App.—Houston [1st Dist.] 2002, orig. proceeding). The trial court has no discretion to deny the writ and issue any other temporary order unless the party opposing the return of the child to the one seeking it presents evidence raising "a serious immediate question concerning the

welfare of the child." TEX. FAM. CODE ANN. § 157.374; *see In re Lau*, 89 S.W.3d at 759. A serious and immediate question concerning the child's welfare requires proof of an imminent danger to the child's physical or emotional well-being. *In re deFilippi*, 235 S.W.3d at 324 (citing *Schoenfeld*, 647 S.W.2d at 955; *McElreath v. Stewart*, 545 S.W.2d 955, 958 (Tex. 1977) (orig. proceeding)).

Before there was any order entered regarding possession of M.S.J., relator filed his both of his petitions for a writ of habeas corpus. At this time, section 157.376 of the Family Code governed and provided:

> (a) If the right to possession of a child is not governed by an order, the court in a habeas corpus proceeding involving the right of possession of the child:
>
> (1) shall compel return of the child to the parent if the right of possession is between a parent and a nonparent and a suit affecting the parent-child relationship has not been filed; or
>
> (2) may either compel return of the child or issue temporary orders under Chapter 105 if a suit affecting the parent-child relationship is pending and the parties have received notice of a hearing on temporary orders set for the same time as the habeas corpus proceeding.
>
> (b) The court may not use a habeas corpus proceeding to adjudicate the right of possession of a child between two parents or between two or more nonparents.

TEX. FAM. CODE ANN. § 157.376.

In this case, relator filed his first (amended) petition for a writ of habeas corpus on July 31, 2019. It was not until November 19, 2019 that the trial court entered a decree

adjudicating relator the biological father of M.S.J. Therefore, at the time relator filed his first petition for a writ of habeas corpus, he had not been adjudicated M.S.J.'s father; thus, the dispute, at that time, involved two or more nonparents. *See id.* §§ 101.0015, 101.024.[1] And as noted above, section 157.376 of the Family Code prohibits the use of a habeas-corpus proceeding to adjudicate the right of possession between two or more nonparents. *See id.* § 157.376.

Furthermore, relator relies heavily on the provisions of 157.376(a)(1) to argue that the trial court had a mandatory duty to return M.S.J. to relator. Again, this presumes that, at the time he filed his first petition for a writ of habeas corpus, relator had been adjudicated M.S.J.'s father. Moreover, at this time, relator had filed his SAPCR, and the Pierces had filed their counterpetition. As such, section 157.376(a)(1) was not applicable.

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[1] Section 101.0015 of the Family Code provides that:

> (a) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or possible genetic father of a child, but whose paternity has not been determined.
>
> (b) The term does not include:
>
> (1) a presumed father;
>
> (2) a man whose parental rights have been terminated or declared to not exist; or
>
> (3) a male donor.

TEX. FAM. CODE ANN. § 101.0015.

Additionally, section 101.024 of the Family Code defines "[p]arent" as "the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father." *Id.* § 101.024(a).

See id. § 157.376(a)(1). Accordingly, based on the foregoing, we cannot say that the trial court abused its discretion by denying relator's first petition for a writ of habeas corpus. *See id.*; *see also Schoenfeld*, 647 S.W.2d at 955; *In re Kubankin*, 257 S.W.3d at 857; *In re deFilippi*, 235 S.W.3d at 322; *In re Lau*, 89 S.W.3d at 759.

With regard to his second petition for a writ of habeas corpus, the record shows that he filed the petition on the same day that the trial court adjudicated him the biological father of M.S.J. Nevertheless, like before, at the time relator filed his second petition for a writ of habeas corpus, a SAPCR was pending. Therefore, relator cannot rely on section 157.376(a)(1) of the Family Code to show that the trial court had a mandatory, ministerial duty to return M.S.J. to relator's custody. *See* TEX. FAM. CODE ANN. § 157.376(a)(1).

To the extent that relator relies on the discretionary portion of section 157.376(a)(2), we note that section 153.131(b) of the Family Code sets forth a rebuttable presumption that appointment of a parent as managing conservator is in the child's best interest. *Id.* § 153.131(b). More specifically, a history of family violence involving the parents of a child removes the above-described parental presumption. *Id.*

> "Family violence," as described in section 71.004 of the Family Code, is,
>
> an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

Id. § 71.004.

The record contains a letter from relator to M.S.J.'s now-deceased mother where relator stated while in prison:

> I promise you I will leave you and take everything you love with me. I am not fucking around. You're lucky I'm letting you make it as it is and you're lucky I'm not there. I would have done tripped out and slapped the fuck out of you and a lot more. You understand me?

Moreover, relator admitted that a picture of M.S.J.'s biological mother offered by trial counsel for real parties in interest was a "fair and accurate representation of what the mother of the child looked like after [relator] hit her." The picture shows the child's mother distraught with blood dripping down her face. Relator also acknowledged that he wrote the following to the child's mother:

> You're lucky I'm not in front of you right now. Because the devil is attacking me, wishing evil on you and putting bad thoughts in my head. All I can do is picture what you did in my mind and I want to scream and cry. You're trash. I can't believe it.

Relator also admitted that he is perpetually in a "fight between good and evil," when asked if he wanted to kill the child's mother, relator responded, "I never act on my thoughts is—people can think things and not act of them."

Dezelle also testified that she would see the child's mother "at least a couple of times a week" after altercations between relator and the child's mother. Dezelle further testified that relator has a propensity for violence and that this violent nature is a danger to the physical or emotional well-being of M.S.J. Additional testimony was presented, which chronicled relator's "anger issues," history of threatening behavior toward the

child's mother, relator's alleged drug use and dealing, and relator's criminal history that includes convictions for unlawful possession of a controlled substance and unlawful possession of a firearm by a felon that resulted in relator's incarceration for approximately eighty percent of M.S.J.'s life.

Based on the foregoing, we cannot say that the trial court abused its discretion by refusing to compel the return of M.S.J. to relator under section 157.376(a)(1) or (a)(2). *See id.* § 157.376(a)(1)-(2); *see also Schoenfeld*, 647 S.W.2d at 955; *In re Kubankin*, 257 S.W.3d at 857; *In re deFilippi*, 235 S.W.3d at 322; *In re Lau*, 89 S.W.3d at 759. Accordingly, we conclude that relator has failed to demonstrate a clear abuse of discretion by the trial court as to the denial of both of his petitions for a writ of habeas corpus, thus entitling him to mandamus relief. *See In re Ford Motor Co.*, 165 S.W.3d at 317; *see also Walker*, 827 S.W.2d at 839-40.

B. Relator's Plea to the Jurisdiction

Next, we address relator's plea to the jurisdiction. In addressing whether mandamus review is available in this context, this Court stated in *In re Keith*,

> the Texas Supreme Court has held that mandamus review is appropriate when the trial court's jurisdiction is challenged in a proceeding involving child custody issues. *See Geary v. Peavy*, 878 S.W.2d 602, 603 (Tex. 1994) (orig. proceeding); *see also In re Green*, 352 S.W.3d 772, 774 (Tex. App.—San Antonio 2011, orig. proceeding). This is due to the unique and compelling circumstances presented when the trial court decides issues pertaining to child custody. *See Geary*, 878 S.W.2d at 603; *see also In re Derzapf*, 219 S.W.3d 327, 334 (Tex. 2007) (orig. proceeding) (exceptional circumstances presented by challenge to temporary orders in suit for access to children support availability of mandamus review). Many other appellate courts have also

> reached the same result. *See In re Martin*, 523 S.W.3d 165, 169 (Tex. App.—Dallas 2017, no pet. h.); *In re McDaniel*, 408 S.W.3d 389, 396 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding) (mandamus relief is an appropriate remedy in a challenge to an order denying a motion to dismiss for lack of standing in a SAPCR case) (citing *In re Roxsane R.*, 249 S.W.3d 764, 775 (Tex. App.—Fort Worth 2008, orig. proceeding)); *In re Shifflet*, 462 S.W.3d 528, 541-42 (Tex. App.—Houston [1st Dist.] 2015, orig. proceeding) (no adequate remedy on appeal and mandamus proceeding appropriate to seek relief from order granting motion to dismiss intervention in SAPCR case for lack of standing); *In re Sandoval*, No. 04-15-00244-CV, 2016 Tex. App. LEXIS 754 (Tex. App.—San Antonio Jan. 27, 2016, orig. proceeding) (mem. op.) (mandamus review appropriate when trial court's jurisdiction is challenged in a proceeding involving child custody issues).

549 S.W.3d at 753. Because eventual review of the jurisdictional question on appeal from a final judgment would not be adequate in this case involving child-custody issues, we conclude that mandamus review of relator's plea to the jurisdiction is appropriate. *See Derzapf*, 219 S.W.3d at 335; *see also In re Keith*, 549 S.W.3d at 753.

1. Applicable Law

It is fundamental that a party seeking conservatorship of a child must have standing to seek such relief. *See In re M.J.G.*, 248 S.W.3d 753, 757 (Tex. App.—Fort Worth 2008, no pet.); *see also In re S.S.J.-J.*, 153 S.W.3d 132, 134 (Tex. App.—San Antonio 2004, no pet.). Standing is implicit in the concept of subject-matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Furthermore, a party's lack of standing deprives the trial court of subject-matter jurisdiction and renders subsequent trial-court actions void. *Id.*; *see In re Smith*, 260 S.W.3d 568, 572 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding).

In the instant case, relator challenged the standing of the Pierces, Tortorelli, and Dezelle in his plea to the jurisdiction. The Pierces, Tortorelli, and Dezelle asserted that they had standing in this matter under section 102.004 of the Texas Family Code, which addresses standing of grandparents and other relatives to either file an original suit requesting managing conservatorship or to intervene in a pending suit. *See* TEX. FAM. CODE ANN. § 102.004. Specifically, section 102.004 provides the following, in relevant part:

> (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 of 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; or
>
> (2) both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.
>
> (b) An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person, subject to the requirements of Subsection (b-1) if applicable, deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this chapter if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.

TEX. FAM. CODE ANN. § 102.004(a)-(b).

We review the trial court's determination of a party's standing to file suit affecting the parent-child relationship by construing the pleadings in favor of the petitioner and looking to the pleader's intent. *See In re S.S.J.-J.*, 153 S.W.3d at 134 (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 446). A party seeking relief in such suits must plead and establish within the parameters of the language used in the Family Code. *See In re Keith*, 549 S.W.3d 747, 751 (Tex. App.—Waco 2017, orig. proceeding) (citing TEX. FAM. CODE ANN. §§ 102.003-.007; *In re H.G.*, 267 S.W.3d 120, 124 (Tex. App.—San Antonio 2008, pet. denied)). If a party fails to do so, the trial court must dismiss the suit. *Id.* (citing *In re C.M.C.*, 192 S.W.3d 866, 870 (Tex. App.—Texarkana 2006, no pet.). Because standing is implicit in subject-matter jurisdiction, it is never presumed and cannot be conferred by waiver or estoppel. *Id.* (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 445-46; *In re H.G.*, 267 S.W.3d at 124). We review the issue of standing de novo. *Id.* (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 445).

2. The Pierces

As noted above, the Pierces, the maternal great aunt and great uncle of M.S.J., filed a counterpetition in relator's SAPCR. They did not seek leave to intervene in this case. As the maternal great aunt and great uncle of M.S.J., the Pierces are not related to M.S.J. within the third degree of consanguinity. *See* TEX. FAM. CODE ANN. § 102.004(a); *see also* TEX. GOV'T CODE ANN. § 573.023(c) (noting that an individual's relatives within the third degree of consanguinity include parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-

grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree)). Thus, despite their assertions to the contrary, the Pierces lacked standing to file suit in this matter under section 102.004(a). *See* TEX. FAM. CODE ANN. § 102.004(a). And because they did not seek leave to intervene in this case, the Pierces did not establish standing under section 102.004(b). *See id.* § 102.004(b). Accordingly, because the Pierces did not satisfy the requirements for standing under either section 102.004(a) or (b), we conclude that the trial court erred in denying relator's plea to the jurisdiction as to the Pierces. *See* TEX. FAM. CODE ANN. § 102.004(a)-(b); *see also Tex. Ass'n of Bus.*, 852 S.W.2d at 445-46; *In re Keith*, 549 S.W.3d at 751.

3. Tortorelli

Unlike the Pierces, Tortorelli, M.S.J.'s great aunt, filed a petition in intervention under section 102.004(b). *See* TEX. FAM. CODE ANN. § 102.004(b). To establish standing to intervene, Tortorelli had to demonstrate "substantial past contact with the child" and that "appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development." *Id.* At the hearing where the trial court ruled on relator's plea to the jurisdiction, evidence was presented that M.S.J. has resided with Tortorelli for the year preceding the hearing and that M.S.J. continues to live with Tortorelli. This is

enough to establish "substantial past contact with the child." *See Chavez v. Chavez*, 148 S.W.3d 449, 456 (Tex. App.—El Paso 2004, no pet.) (concluding there was standing to intervene when the children had resided with the grandparents for over a year); *In re A.M.*, 60 S.W.3d 166, 168 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (concluding there was standing when a seventeen-month-old child had resided with foster parents for fourteen months); *In re M.T.*, 21 S.W.3d 925, 926 (Tex. App.—Beaumont 2000, no pet) (concluding there was standing to intervene when the child had resided with foster parents for fourteen months); *In re Hidalgo*, 938 S.W.2d 492, 495-96 (Tex. App.—Texarkana 1996, no writ) (concluding that step-grandmother had standing to file a petition for managing conservator when she and the child had been close since the child's birth and the child had resided with the step-grandmother). And as outlined above in the analysis of relator's petitions for a writ of habeas corpus, there was ample evidence that appointment of relator as the sole managing conservator of M.S.J. would significantly impair the child's physical or emotional development. *See* TEX. FAM. CODE ANN. § 102.004(b). Accordingly, we cannot say that the trial court erred by concluding that Tortorelli met the requirements for standing under section 102.004(b) and by denying relator's plea to the jurisdiction as to Tortorelli. *See id.*; *see also Tex. Ass'n of Bus.*, 852 S.W.2d at 445-46; *In re Keith*, 549 S.W.3d at 751.

4. Dezelle

Like Tortorelli, Dezelle, M.S.J.'s aunt, filed a petition in intervention. However, the mandamus record does not establish that Dezelle had "substantial past contact" with M.S.J. *See* TEX. FAM. CODE ANN. § 102.004(b). According to Dezelle, the extent of her contact with M.S.J. was her presence when he was born and occasional visits. In fact, Dezelle testified that, although she would take custody of M.S.J if awarded, she would rather M.S.J. reside with Tortorelli. Because she did not establish "substantial past contact" with M.S.J., and because she did not file an original suit requesting managing conservatorship under section 102.004(a), we conclude that the trial court erred by determining that Dezelle had standing in this matter under section 102.004(a) or (b). *See id.* § 102.004(a)-(b). Accordingly, we further conclude that the trial court erred by failing to grant relator's plea to the jurisdiction as to Dezelle. *See id.* § 102.004(a)-(b); *see also Tex. Ass'n of Bus.*, 852 S.W.2d at 445-46; *In re Keith*, 549 S.W.3d at 751.

IV. CONCLUSION

Based on the foregoing, we hold that the trial court abused its discretion by failing to grant relator's plea to the jurisdiction as to the Pierces and Dezelle due to their lack of standing in this matter. However, because Tortorelli met the standard outlined in section 102.004(b) for standing, *see* TEX. FAM. CODE ANN. § 102.004(b), we cannot say that relator is entitled to mandamus relief as to her. Therefore, of all the real parties in interest in this case, only Tortorelli properly demonstrated standing to remain in the case. We further conclude that relator has not established his entitlement to mandamus relief as to either

of his petitions for a writ of habeas corpus. Therefore, given the above, we conditionally grant relator's petition for writ of mandamus, in part. We are confident respondent will comply, and the writ will issue only if respondent fails to do so.

JOHN E. NEILL
Justice

Before Chief Justice Gray
Justice Davis, and
Justice Neill
(Chief Justice Gray concurring with a note)*
Conditionally granted, in part
Opinion delivered and filed September 2, 2020
[OT06]

*(Chief Justice Gray concurs in the Court's judgment. A separate opinion will not issue).