

Interventions in Texas SAPCR Cases

What – becoming a party to a suit

- I. Standing to intervene - who has it?
 - a. TRCP Rules 60 and 61 – any party may intervene subject being struck for good cause, and the regular pleading rules apply
 - b. Original suit for managing conservatorship
 - i. 102.003
 1. 15 categories incl care, custody, and control
 2. Most Interventions in three of them
 - a. 102.003(a)(9)
 - b. 102.003(a)(11)
 - c. 102.003(a)(13)
 - ii. 102.004 – 3rd degree and consent or significant impairment
 - iii. NO original suit for possessory conservatorship by grandparent or others
 - iv. Sibling may file, modify, or intervene for ACCESS 102.0045, 153.551. The filing sibling must be over 18 if not a DFPS suit
 - c. Intervene with leave
 - i. 102.004 – grandparent or other with past contact AND significant impairment; wanting PC only
 - d. 3rd degree consanguinity Tx Govt Code 573.023
 1. 3rd – great-grandparent, aunt/uncle, niece/nephew
 2. 2nd – grandparent, sibling
 3. 1st – parent-child
- II. File Petition in Intervention or Request Leave to
 - a. Regular TRCP rules for draft/file/serve petition (21a service)
 - b. 2 paths
 - i. People who have standing to file an original suit: File and serve a Petition in Intervention

1. TRCP “Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” *Rule 60 - Intervenor's Pleadings*, Tex. R. Civ. P. 60
 2. Petition can be request to intervene - In the Interest of AT, No. 14-14-00071-CV, 2014 TEX.APP.LEXIS 7592 (Tex.App.- Houston 14th July 15, 2014).
 3. No hearing is needed, the court will usually impliedly grant or accept the intervention unless there is an objection that necessitates a hearing on the issue.
 - a. TIP probably better to get granted on the record
- ii. People who do not have standing to file an original suit but can prove substantial past contact AND significant impairment
1. In some places it DOES need a separate motion and hearing to get leave to intervene, petition would be exhibit to motion until filed after leave granted
 2. In Greater Houston counties, no separate hearing required file Petition in Intervention as the request for leave to intervene, OC can move to strike or to dismiss and then the hearing is held
 - a. Needs docket entry or grant of leave on the record, or a written order
- c. Hearing on Leave to Intervene/Motion to Dismiss
- i. Trial court has discretion to grant/deny leave even if standing proven - In the Interest of EC, no. 05-17-00723, 2017 TEX.APP.LEXIS 11866 (Tex.App.-Dallas December 20, 2017).

- a. TIP: if client has standing to file orig suit, probably should go ahead and file or risk being kept out later
- ii. Trial court must weigh the benefits of the intervention against the potential disruption of the ongoing suit. – EC case
- iii. Trial court can keep out a party who is not a necessary party but would otherwise have standing but did not file an original petition – EC Dallas case
- iv. “[A] statute's use of the term may ‘does not permit trial courts complete discretionary authority: trial courts do not have discretion to make decisions in an arbitrary or unreasonable manner, without reference to guiding rules or principles.’” - In re M.B, no.09-19-00247-CV, 2019 WL 4865197, at 3-4 (Tex. App. Oct. 3, 2019)

III. Interventions occur most often when a parent has died, is incarcerated, has a CPS case, or other danger to the child

- a. Parental presumption – are there facts to overcome it?
 - i. Troxel v. Granville, 530U.S. 57, 67(2000)(plurality opinion)
 - 1. “so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family”
 - ii. In Re CJC Tex 2020 – extended parental presumption to modifications (if 1 or both parents “fit” in previous order) and not just original suit; if parent is “fit”, court cannot appoint nonparent
 - 1. Grandparents and stepdad both intervened into open mod after mom died but before case formally dismissed
 - 2. COA said grandparents had no standing because no significant impairment 102.004

3. COA said stepdad did have standing because of actual care, custody, control 102.003(a)(9)

IV. Definitions

a. Substantial past contact

- i. *Jasek vs TDFPS*, 348 S.W.3d 523 (Tex.App.–Austin 2011). “actual care, custody and control” did not require some legal right to same, but instead turned on facts such as who had provided for their daily care, protection, control and reasonable discipline, basic needs for food, shelter and medical care, and other day-to-day needs. As such, the court found that the Jaseks had met the standing requirements under 102.003(9).

b. Substantial impairment standard

- i. “fit parent” is a VERY high bar – issues with hygiene, academics, even CPS investigation might not be enough alone (but might be if combined); current specific behavior, not just past; not enough that intervenor would be better
- ii. Picture of mom bruised from dad beating her may be enough to show violence, danger to child - MSJ
- iii. Removing the child from a nonparent caretaker might be significant impairment if the uprooting would be “devastating” or cause “serious psychological harm” or act as “psychological amputation.” In the Interest of JC and SC, 346 S.W.3d 189, 195 (Tex.App.-Houston 14th 2011), citing *In Re Rodriguez*, 940 S.W.2d 265, 273(Tex.App.-San Antonio 1997); see also *In Re Vogel*, 261 S.W.3d 917 (Tex.App.-Houston 14th 2008). Such evidence must involve specific facts as to the cause and effect on the child from the uprooting and not be based on a general theoretical or speculative basis. One court has narrowed the analysis, stressing that the focus on the potential harm to the child by the child’s removal from a current placement is misplaced. In the Matter of

BBM, 291 S.W.3d 463, 467-468 (Tex.App.-Dallas 2009), petition for review denied. Instead, the inquiry of the court should only be whether the placement of the child with the natural parent would significantly impair the child's physical health or emotional development. *Id.* As these circumstances might rebut the parental presumption, they might meet the significant impairment burden of section 102.004(b) as well.

iv. Article in 2019 Advanced Family

V. Recent

a. MSJ – Waco

i. *In re M.S.J.*, No. 10-20-00067-CV, 2020 WL 5241465 (Tex. App.—Waco 2020, orig. proceeding) (mem. op.) (09-02-20).

ii. ii. Mom dies, dad files SAPCR to be adjudicated father and for SMC; evidence that dad violent beat mother so bruises show on photo; trial court gave TMC to Interveners and denied dad's habeas petition

iii. Three interveners

1. Maternal great aunt 1 – no standing because not within the 3rd degree of consanguinity

2. Maternal great aunt 2 – sub past contact and dad a danger – has standing, though not within 3rd degree consanguinity

3. Maternal Aunt – failed to establish substantial past contact; could have filed original petition, no standing to intervene

b. *BUH – Corpus Christi*

i. *In re B.U.H.*, No. 13-18-00622-CV, 2020 WL 7074358 (Tex. App.—Corpus Christi 2020, no pet. h.) (mem. op.) (12-03-20).

ii. Grandparents filed based on six months but only had five

- iii. Trial court dismissed the intervention and Appeals court agreed though concurrence pointed out they would have had other bases for standing

c. *TDL* – San Antonio

- i. *In re T.D.L.*, ___ S.W.3d ___, No. 04-20-00274-CV, 2021 WL 1009326 (Tex. App.—San Antonio 2021, no pet. h.) (03-17-21)
- ii. Essentially allows an implied pleading
- iii. Grandmother’s petition included 102.004 but her affidavit also included facts for 102.009(9)
- iv. Appeals court said that’s enough for fair notice

d. *In Re Ramirez* – Austin

- i. *In re Ramirez*, No. 03-21-00145-CV, 2021 WL 1991269 (Tex. App.—Austin 2021, orig. proceeding) (mem. op.) (05-19-21).
- ii. Actual care custody and control does not require parental abdication
- iii. Only requires parent-like role
- iv. 6-month period for grandparent standing does not have to be uninterrupted

VI. Tips

- a. Count correctly – January 18 to June 16 is five months, not six *In re B.U.H.*, No. 13-18-00622-CV, 2020 WL 7074358 (Tex. App.—Corpus Christi 2020, no pet. h.) (mem. op.) (12-03-20).
- b. File an original petition if you can
- c. Plead all the bases that are true
- d. Affidavits need to be specific, recent
 - i. Give client a list of questions similar to what you would ask on direct or need to fix on redirect and have them write answers. Use the answers to draft the affidavit.

VII. Keeping Intervener Out

- a. Motion to Dismiss of Lack of Standing

- i. Look at all the tips above and plan to counter them – count dates, see if any could have filed an original petition, investigate facts

VIII. Trauma-Informed

- a. Almost by definition a part of the case if someone needs to intervene - dysfunction at least
- b. Connections and relationships are key to healing per Bruce D Perry
- c. Allow room for redemption, for reconciliation after recovery from addiction; help families heal at reunification

IX. Stories

- a. S case – had a hearing because of objection to intervention, showed significant impairment - reports of loaded guns where child could access them, second grade child asked for alarm clock so she could get to school on time
 - i. Combination of things add up to significant impairment
- b. D case – had a standing hearing, demonstrated substantial past contact with testimony and with a calendar that was colored every night the child had spent with them over the past year
- c. CPS cases - sometimes it is necessary to intervene to get CPS to do an additional home study on a relative identified by a parent as a potential placement, or for a relative to be considered as a placement over party objection

Rules

TRCP 60 “Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.”

TRCP 61 These rules of pleading shall apply equally, so far as it may be practicable to intervenors and to parties, when more than one, who may plead separately.

Tx Family Code 102.003 (a) An original suit may be filed at any time by:

- (1) a parent of the child;
- (2) the child through a representative authorized by the court;
- (3) a custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- (4) a guardian of the person or of the estate of the child;
- (5) a governmental entity;
- (6) the Department of Family and Protective Services;
- (7) a licensed child placing agency;
- (8) a man alleging himself to be the father of a child filing in accordance with Chapter [160 \(Uniform Parentage Act\)](#), subject to the limitations of that chapter, but not otherwise;
- (9) a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;**
- (10) a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Chapter [161 \(Termination of the Parent-child Relationship\)](#) or to whom consent to adoption has been given in writing under Chapter [162 \(Adoption\)](#);
- (11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition;
- (12) a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person's home for

at least 12 months ending not more than 90 days preceding the date of the filing of the petition;

(13) a person who is a relative of the child within the third degree by consanguinity, as determined by Chapter [573 \(Degrees of Relationship; Nepotism Prohibitions\)](#), Government Code, if the child's parents are deceased at the time of the filing of the petition;

(14) a person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under Section [102.0035 \(Statement to Confer Standing\)](#), regardless of whether the child has been born; or

(15) subject to Subsection (d), a person who is an intended parent of a child or unborn child under a gestational agreement that complies with the requirements of Section [160.754 \(Gestational Agreement Authorized\)](#).

(b) In computing the time necessary for standing under Subsections (a)(9), (11), and (12), the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit.

(c) Notwithstanding the time requirements of Subsection (a)(12), a person who is the foster parent of a child may file a suit to adopt a child for whom the person is providing foster care at any time after the person has been approved to adopt the child. The standing to file suit under this subsection applies only to the adoption of a child who is eligible to be adopted.

(d) A person described by Subsection (a)(15) has standing to file an original suit only if: (1) the person is filing an original suit jointly with the other intended parent under the gestational agreement; or (2) the person is filing an original suit against the other intended parent under the gestational agreement.

Tx Family Code 102.004 "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; 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.(b-1) A foster parent may only be granted leave to intervene under Subsection (b) if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12).(c) Possession of or access to a child by a grandparent is governed by the standards established by Chapter 153.” Tex. Fam. Code § 102.004