



**Fourth Court of Appeals**  
**San Antonio, Texas**

**CONCURRING OPINION**

No. 04-19-00698-CV

**IN THE INTEREST OF J.R.B., JR., a Child**

From the 45th Judicial District Court, Bexar County, Texas  
Trial Court No. 2017-PA-02035  
Honorable Richard Garcia, Judge Presiding

Opinion by: Irene Rios, Justice  
Concurring Opinion by: Beth Watkins, Justice

Sitting: Patricia O. Alvarez, Justice  
Irene Rios, Justice  
Beth Watkins, Justice

Delivered and Filed: May 13, 2020

I concur with my esteemed colleagues that, as Texas Family Code section 102.006 is currently written, Grandmother lacks standing to seek conservatorship of Jason. However, I am troubled that this statutory scheme affords fewer rights to family members who care for children involved in parental termination proceedings than it grants to strangers who provide the same care. While I understand this is a legislative prerogative, I write separately to implore the Legislature to amend the Family Code to place family members in these circumstances on equal footing as non-family members.

As pointed out by my colleagues, section 102.003 of the Texas Family Code grants general standing to file a parent-child relationship to “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. . . .” *See* TEX. FAM. CODE ANN. § 102.003(a)(9).

Grandmother cared for Jason for nearly two years and filed her petition nine days from the date Jason was removed from her care. *See id.* I agree with the majority that Grandmother would have general standing to file a SAPCR as a result of the care she provided for Jason. *See id.*

In addition, section 102.005 identifies who has standing to file a suit for adoption. *See id.* § 102.005. It grants standing to “an adult who has had actual possession and control of the child for not less than two months during the three-month period preceding the filing of the petition. . . .” *Id.* § 102.005(3). For the reasons described above, I believe Grandmother also would have standing to file an adoption petition under section 102.005. *See id.*

Despite meeting these requirements, Grandmother lacks standing under section 102.006, which limits the standing of family members when the parent-child relationship has been terminated. *See id.* § 102.006(a). Specifically, “if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit *may not* be filed by. . . (3) a family member or relative by blood, adoption, or marriage of. . . a former parent whose parent-child relationship has been terminated. . . .” *Id.* § 102.006(a)(3) (emphasis added). Section 102.006(b) provides a limited exception for “a person who: (1) has a continuing right to possession of or access to the child under an existing court order; or (2) has the consent of the child’s managing conservator, guardian, or legal custodian to bring the suit.” *Id.* § 102.006(b). And section 102.006(c) provides another exception for certain family members to file “an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship” is terminated. *Id.* § 102.006(c). Here, the record shows Grandmother had neither a continuing right to possession or access to Jason under an existing court order nor the consent of Jason’s managing conservator to bring the suit. *See id.*

The parental rights of both Jason’s parents were terminated on July 30, 2018. Therefore, under section 102.006(c), Grandmother was required to file a petition seeking managing conservatorship before October 28, 2018. However, on October 28, 2018, Grandmother had care, control, and possession of Jason, and the record contains no evidence that the Department had given her any indication it intended to change that relationship. The first time Grandmother had any reason to know her interests were not aligned with the Department’s interests and she would need to file an adoption petition was when the Department removed Jason from her care—ten months after her deadline to file such a petition expired.

At the Department’s request, Grandmother cared for Jason for nearly two years. If Grandmother had not been related to Jason, then her care for him would have ensured her standing under section 102.003(a)(9) or 102.005, and her September 3, 2019 petition would have been timely. But because Grandmother was related to Jason, her deadline to file suit was ten months earlier. In this way, Grandmother’s familial relationship to Jason deprived her of substantive rights, shortening her standing window and setting her deadline to petition a court for access to him *before* she reasonably should have known such a filing was needed.

This result is contrary to the State’s interest in keeping families together and providing stability for a child. This court has previously voiced its concern with the inequitable position in which section 102.006 places family members. *See In re J.C.*, 399 S.W.3d 235, 240 (Tex. App.—San Antonio 2012, no pet.) (Speedlin, J., concurring); *In re J.C.*, 399 S.W.3d 235, 242 (Tex. App.—San Antonio 2012, no pet.) (Hilbig, J., concurring); *In re A.M.*, 312 S.W.3d 76, 88–89 (Tex. App.—San Antonio 2010, pet. denied) (Marion, J., concurring). Instead of respecting the “fundamental liberty interest in the parent-child relationship that extends to grandparents,” section 102.006 treats grandparents who care for their grandchildren during proceedings to terminate

parental rights more harshly than strangers who provide the same care. *See In re J.C.*, 399 S.W.3d at 240.

When the Department places a child with family members during proceedings to terminate the parental rights of that child's parent, those family members should have a fair opportunity to petition for conservatorship or adoption. Section 102.006 deprived Grandmother of that opportunity. I therefore urge the Legislature to amend section 102.006 to give family members the same standing to file suit seeking conservatorship or adoption the Family Code gives non-family members under sections 102.003(a)(9) and 102.005(3). For these reasons, I respectfully concur in the judgment.

Beth Watkins, Justice