IN THE SUPREME COURT OF MISSOURI

MARY HANSON and DAVID HANSON, Petitioners-Appellants, v. MARGARET CARROLL and, BRIDGET CARROLL, Respondents-Respondents.	))))))))))	Supreme Court No. SC96179

Appeal from the Circuit Court of the City of Saint Louis, State of Missouri
The Honorable Christopher McGraugh, Judge

SUBSTITUTE BRIEF OF RESPONDENTS

MARGARET CARROLL AND BRIDGET CARROLL

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JURISDICTIONAL STATEMENT

The Missouri Supreme Court has jurisdiction over this appeal, pursuant to Article V, Section X of the Missouri Constitution, because the issue of the application of the third party provisions of § 452.375.5(5) when custody of a child has already been determined by a court while the applicants are grandparents who do not meet the requirements of § 452.402 presents issues of general interest and importance, whether or not this Court has determined any party has the right to seek third party custody or visitation in an original proceedings requires reexamination of existing law; and opinions of the appellate court conflict with this Court's opinion in *In re the Matter of: T.Q.L.*, 386 S.W.3d 135 (2012), all in accordance with this Court's scope of review as implemented under Rule 83.02.

STATEMENT OF FACTS

Margaret Carroll ("Margaret") is the great-grandmother of Rory Carroll-Hanson ("Rory"). Margaret was granted Letters of Guardianship for Rory by the probate court of the City of St. Louis on December 7, 2009 in a contested guardianship proceeding. [Supplemental Legal File ("Supp. L.F.") 9-12].[1] New Letters of Guardianship were issued by the probate court on July 10, 2014, appointing Margaret Carroll and Bridget Carroll ("Bridget") as Co-Guardians for Rory. Bridget is Rory's maternal great-aunt.

Appellants are the paternal grandparents of Rory Carroll-Hanson. Appellants were not parties to the underlying guardianship action. [Supp. L.F. 13, 34]. At no time did the probate court grant or permit Appellants any custody or visitation rights or any other legal rights regarding Rory. [Supp. L.F. 34].

Since Margaret's initial application for guardianship of Rory was granted, Appellants have pursued multiple court actions in attempts to either take guardianship of Rory from Respondents or to be granted custody or visitation rights for Rory. The court actions are as follows:

[1] Margaret was granted Letters of Guardianship for her other great-grandson, Brendan Thomas Carroll-Forsythe, on February 9, 2010, in a separate proceeding. New Letters of Guardianship were issued by the probate court on September 23, 2015, appointing Margaret Carroll and Bridget Carroll as Co-Guardians for Brendan.

1) Appellants filed a petition for termination of guardianship on December 16, 2009, which the probate court dismissed for failure to state a cause of action. [Supp. L.F. 15].

2) Appellants filed a motion to intervene in the guardianship action after the December 7, 2009 judgment was entered. The probate court denied this motion. [Supp. L.F. 13].

3) On February 26, 2010, Appellants filed a "Petition for Grandparent Visitation, Child Custody or Visitation at Issue." The case went to trial and the court entered an order and judgment denying visitation and child custody to Appellants. [Supp. L.F. 16-22].

4) On February 24, 2012, Appellants filed a second petition for grandparent visitation in the Circuit Court of the City of St. Louis, cause number 1222-FC00565. Margaret filed a motion to dismiss the action on March 14, 2012, which was heard, argued and submitted on June 12, 2012. Judge Michael K. Mullen issued his order and judgment dismissing the action on December 4, 2012. [Supp. L.F. 22-33].

5) On the same day Judge Mullen heard Margaret's motion to dismiss, Appellants filed their petition to remove the guardian and for appointment of a successor guardian along with a motion for appointment of a guardian ad litem and for psychological evaluations of Margaret and the child. [Supp. L.F. 35]. Margaret filed her motion to dismiss on September 17, 2012. The motion to dismiss was heard and submitted on

February 26, 2013 and the probate court issued its judgment and order dismissing Appellants' pleadings for lack of standing on March 1, 2013. [Supp. L.F. 34-35].

6) Appellants filed the Petition for Visitation and Custody at issue in this appeal on March 30, 2015. [L.F. 6]. Margaret and Bridget filed their Motion to Dismiss for lack of standing and for failure to state a claim on May 14, 2015. [L.F. 21-25]. The trial court issued its Order and Judgment on August 25, 2015, directing that "it is Ordered and Decreed that Respondents Margaret Carroll and Bridget Carroll's Motion to Dismiss Petitioners' Petition for Visitation and Custody **for Lack of Standing and for Failure to State a Claim Upon Which Relief Can be Granted** is GRANTED," (emphasis added) [L.F. 40].

Appellants did not seek leave to amend their Petition and then filed this appeal.

ARGUMENT

I. Standard of Review

The review of a dismissal for lack of standing and for failure to state a claim upon which relief can be granted is *de novo.* The question is a matter of law based on "the petition along with any other non-contested facts accepted as true by the parties at the time the motion to dismiss was argued." *State ex rel. St. Louis Retail Group v. Kraiberg*, 343 S.W.3d 712, 715 (Mo. App. E.D. 2011) *quoting Executive Bd. of Missouri Baptist Convention v. Carnahan*, 170 S.W.3d 437, 445 (Mo. App. W.D. 2005); *McGaw v. McGaw*, 468 S.W.3d 435, 438 (Mo. App. W.D. 2015). "Standing is a jurisdictional matter antecedent to the right to relief." *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002). "Standing requires that a party seeking relief have a legally cognizable interest in the subject matter and that he has a threatened or actual injury." *Eastern Missouri Laborers District Council v. St. Louis County*, 781 S.W.2d 43, 46 (Mo. banc 1989). Courts must determine the question of jurisdiction before reaching substantive issues, because if a party lacks standing, the court must dismiss the case for lack of jurisdiction over the substantive issues presented. *State ex rel. St. Louis Retail Group* at 715 *citing Columbia Sussex Corp. v. Missouri Gaming Com'n*, 197 S.W.3d 137, 140 (Mo. App. W.D. 2006). A party cannot waive lack of standing. *State ex rel. St. Louis Retail Group* at 715-716.

RESPONSE TO APPELLANTS' POINT I

II. The probate court determined custody of Rory in 2009 and continues to have exclusive jurisdiction.

The trial court correctly dismissed the petition because Appellants lack standing to seek visitation pursuant to Chapter 452, R.S.Mo. The probate court of the City of St. Louis adjudicated custody of Rory in 2009 when it granted Letters of Guardianship to Margaret, and the probate court retains exclusive jurisdiction over custody of Rory.

In Missouri, the custody of a child may be adjudicated in at least five types of actions: 1) Dissolution of Marriage; 2) Habeas Corpus; 3) Juvenile; 4) **Guardianship**; and 5) Paternity. *In re Moreau*, 161 S.W.3d 402 (Mo. App. S.D. 2005). *Moreau* involved a father's attempt to seek custody in domestic court after grandparents had been granted letters of guardianship in probate court. The appellate court ruled that the trial court "ran afoul of the 'concurrent jurisdiction doctrine,' [which] provides that if two courts can exercise jurisdiction over a particular person and subject, the court that first exercises such jurisdiction does so to the exclusion of subsequent intervention by the second court." 161 S.W.3d 402, 407, *quoting In re Care and Treatment of Lieurance*, 130 S.W.3d 693, 697 (Mo. App. 2004).

Applying the decision in *Moreau* to the facts of this case, the probate division of the City of St. Louis had subject matter jurisdiction to award custody of Rory to a third party, rather than to the natural parents, in the 2009 guardianship action. Alternatively, a different division of the same circuit court would have had subject matter jurisdiction to

award custody of a child to a third party in a **dissolution** action. *In re Moreau* at 406. A key component of this doctrine, however, is that the court in which the claim is first filed acquires exclusive jurisdiction over the matter. *Id. at* 407.

The trial court would have committed error had it not dismissed the petition filed by Appellants because to rule on the petition would have been a violation of the exclusivity component of the concurrent jurisdiction doctrine. At the time Appellants filed their petition, letters of guardianship were still in place for Rory and no petition was pending to terminate the guardianship. The probate court has exclusive jurisdiction over the custody of Rory, and exclusive jurisdiction continues until the guardianship is terminated. *Id.* Consequently, because the trial court lacked jurisdiction to enter a judgment on the underlying petition, the appellate court lacks jurisdiction over an appeal from the judgment. *Moreau* at 407-408. *See also State ex. rel. Nixon v. Sweeney*, 936 S.W.2d 239, 242 (Mo. App. 1996).

III. Appellants failed to state a claim upon which relief can be granted under either Section 452.402 or Section 452.375.

An examination of Appellants' petition for custody and visitation readily reveals that Appellants fail to cite any authority for the relief they requested, other than a general reference to Chapter 452. It is evident that Appellants chose to frame their petition this way because there is no legal authority for the relief they request. Though Appellants presented a moving target at the hearing on Respondents' motion to dismiss when they announced they were dropping their request for custody and declared they were only seeking visitation under § 452.375.5(5), R.S.Mo instead of § 452.402, R.S.Mo, the trial court found the bullseye and properly determined that Appellants failed to state any cognizable claim upon which relief can be granted.

Pursuant to § 452.402, a court may grant reasonable visitation rights to the grandparents of the child when: 1) the parents of the child have filed for a dissolution of their marriage; 2) one parent of the child is deceased and the surviving parent denies reasonable visitation to a parent of the deceased parent of the child; or, 3) the child has resided in the grandparent's home for at least six months within the 24 month period immediately preceding the filing of a petition; **and** 4) a grandparent is unreasonably denied visitation with the child for a period exceeding 90 days. In other words, any of the first three components of this test **must** be combined with the fourth prong, an unreasonable denial of visitation for a period exceeding 90 days. *In the Matter of the Adoption of E.N.C.*, 458 S.W.3d. 387, 402 (Mo. App. E.D. 2014).

Even assuming the trial court had jurisdiction to determine visitation pursuant to § 452.402, Appellants' petition does not claim, because it cannot claim, that any of the first three circumstances exist. Appellants' petition failed to state a claim upon which relief could be granted pursuant to § 452.402, and any claim based on this statute was correctly dismissed.

Appellants abandoned their assertion that § 452.402 could provide them any relief and instead then relied exclusively on the decision issued in *In re the Matter of T.Q.L.*, 386 S.W.3d 135 (Mo. banc 2012). In *T.Q.L.*, a mother's former paramour, M.M.A., who was not the biological father of T.Q.L. but who had acted as the child's parent and helped raise the child for a number of years, filed an original paternity action seeking custody and visitation. M.M.A. filed several amended petitions which alleged that both biological parents were unfit to act as the child's natural guardians. Mother filed a motion to dismiss for failure to state a claim, and the trial court granted the motion. M.M.A. appealed and the appeal was transferred to this Court which held that M.M.A.'s petition sufficiently pled a claim for third-party custody pursuant to § 452.375 (5).

Relying on the *T.Q.L.*, Appellants argue that they are permitted to seek an independent action under § 452.375(5) for third-party visitation. This argument is seriously flawed and must be rejected. As the Western District appellate court has stated, "The prospect of reliance on § 452.375(5) to authorize the filing of an **original proceeding** to determine third-party custody was flatly rejected by this court." *In the Matter of the Adoption of C.T.P.*, 452 S.W.3d 705, fn. 33 (Mo. App. W.D. 2014) (internal citation omitted). The court went on to state, "Neither our statutes nor our case law

remotely suggest that ***any third party that comes along has standing to bring an action seeking custody of children***." *Id.* (emphasis in original). Appellants are attempting to file an independent third-party action for visitation though there has already been an original proceeding that determined custody, and they attempt to do this outside of a dissolution context. For the judicial branch to extend §452.375.5(5) to permit this type of claim is not just creating a slippery slope, it is creating an avalanche. This type of "breathtakingly broad" statutory right was found unconstitutional by the United States Supreme Court. *Troxell v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

Appellants submit that *T.Q.L.* authorizes any third-party to file a request for custody or visitation at any time pursuant to §452.375.5(5), even when a prior custody determination has been made. This interpretation of the statute will create a barrage of potential claims by non-parent third parties that was not intended by the legislature. A biological parent who just had his or her parental rights terminated could turn around the next day and seek third-party custody or visitation claiming that the child's welfare requires preservation of a biological bond. A nanny, teacher, or bus driver who developed a relationship with a child would now be entitled to file an independent action seeking third-party custody or visitation claiming the welfare of the child requires it. And nothing would prevent these applicants from refiling these claims if their initial request was denied. These are just a few examples of the inevitable consequences of Appellants' "breathtakingly broad" interpretation of § 452.375.5(5), one which would

produce disruptive, expensive, and unwanted results, to the detriment of the courts, the litigants, and, most important, the children involved.

In *C.T.P.*, the Western District faced an argument similar to the one raised by Appellants - that a third party has the right to seek custody pursuant to § 452.375.5(5) based on the Supreme Court's decision in *In re T.Q.L.* The appellant in *C.T.P.* argued that *T.Q.L.* elevated § 452.375.5(5) beyond merely authorizing a trial court to award third-party custody in dissolution cases to authorizing an independent cause of action that can be asserted by any third party in an original proceeding to determine child custody and visitation. The *C.T.P.* court expressed reservation about the appellant's interpretation of *T.Q.L.* and questioned if this Court intended to announce a construction of the statutory section that would authorize third parties to initiate original proceedings to determine child custody and visitation rights.

Appellants clearly do not even have the facts to support this argument. This is not an original proceeding to determine child custody and visitation. Appellants are, in essence, seeking a modification of a prior custody decision and are attempting to do this in a different court. Permitting these grandparents to seek custody or visitation in family court without meeting the requirements to 1) terminate the guardianship; 2) meet the legal standard to modify a previously determined custody decision; or 3) seek grandparent visitation pursuant to § 452.402, would be such an expansion of § 452.375.5(5) that it would be just as "breathtakingly broad" as the Washington statute found unconstitutional in *Troxell, supra* at 67. Appellants are extended family members who do not meet the "special and extraordinary circumstances" which must be pled and

proven to seek third-party custody for the "welfare" of the child. *T.W. ex rel. R.W. v. T.H.*, 393 S.W.3d 144 (Mo. App. E.D. 2013). Appellants fail to plead any factual circumstances that would make them more than "any third party that comes along" as rejected in *White v. White*, 293 S.W.3d 1 (Mo. App. W.D. 2009).

T.Q.L. provides Appellants no assistance. The probate court already determined custody and the probate court retains exclusive jurisdiction over Rory's custody. Appellants' claims are not filed in a dissolution context or in an original custody proceeding where third-party custody or visitation could even be considered. Appellants are not remotely comparable to the nonbiological parents who sought custody and visitation in *T.Q.L., D.S.K., or McGaw.* Petitioners failed to state any claim pursuant to § 452.375.5(5) where visitation could be considered by the trial court.

Even assuming Appellants had standing to assert a claim for visitation under § 452.375.5(5), they failed to sufficiently plead a claim. Appellants made one conclusory statement, "[t]hat it is in the best interests of the child and the welfare of the child requires that Petitioner's [*sic*]" be granted custody and visitation rights. L.F. 6. "Other than vague, conclusory allegations mirroring the language of the statute, which any third-party could make, potentially violating *Troxell* [*supra*]…," Appellants would need to provide some facts that, if proven, would demonstrate that Rory's welfare required them to have custody or visitation. *McGaw v. McGaw*, 468 S.W.3d 435, 451 (Mo. App. W.D. 2015). A court disregards conclusions not supported by facts when assessing a motion to dismiss. *Howard v. Frost National Bank*, 458 S.W.3d 849, 853 (Mo. App. E.D. 2015).

The "welfare of the child" prong of section 452.375.5 is separate and distinguishable from the "best interest of a child" requirement. The primary rule in statutory construction is to ascertain the intent of the legislature from the language used. *Nelson v. Crane*, 187 S.W.3d 868, 869-870 (Mo. banc 2006) *citing State ex rel. Riordan v. Dierker*, 956 S.W.2d 258, 260 (Mo. banc 1997). "Courts should not treat the term 'welfare' used in section 452.375.5(5) as the equivalent of 'best interests.' Rather the two are separate and distinct findings, and 'welfare' implicates pleading and proving special or extraordinary circumstances that make third-party custody or visitation in the child's best interest." *T.W. ex rel. R.W. v. T.H.*, 393 S.W.3d 144, 150 (Mo. App. E.D. 2013).

If the legislature intended "welfare" to be synonymous with the term "best interest," it would not have used different terms. *Id*. at 870. When different statutory terms are used in different subsections of a statute, appellate courts presume that the legislature intended the terms to have different meaning and effect. *Id., citing Armco Steel v. City of Kansas City, Mo.*, 883 S.W.2d 3,7 (Mo. banc 1994). "Welfare" is used in no other subsection of the statute, and it carries a meaning and effect that is different from "best interests."

The probate court already determined that both respondents are proper custodians for the child and that the appointment of Respondents as co-guardians is in Rory's best interest. The probate court maintains exclusive jurisdiction until the guardianship is terminated. *In the Interest of Moreau*, 161 S.W.3d 402, 407 (Mo. App. S.D. 2005) *See also Blackburn v. Mackey*, 131 S.W.3d 392, 396-97 (Mo. App. 2004). Even though Appellants do not have standing to attempt to terminate the guardianship, they also failed

to plead any special or extraordinary circumstances that could justify any claim pursuant to §452.375.5(5). The trial court properly dismissed Appellants' petition.

Further, Appellants unsuccessfully attempted to circumvent the requirements of the grandparent visitation statute (§ 452.402 R.S.Mo) by asserting they had a claim under § 452.375.5(5). This type of attempt was rejected by the court in *In re the Matter of the Adoption of E.N.C, . supra*. "If all grandparents were allowed to legally petition the court for visitation with a grandchild pursuant to third-party visitation in § 452.375, then § 452.402 and its three circumstances allowing for grandparent visitation would not be necessary." *E.N.C.* at 403. The court went on to state, "This was never a case of dissolution, which is required for grandparent visitation under § 452.402.1(1), as well as a requirement for third-party visitation under § 452.375." *Id.* Even if the trial court had jurisdiction to determine visitation, Appellants would have to meet the requirements of § 452.402, which they cannot do and do not even claim. Appellants cannot seek visitation pursuant to § 452.375.5(5) because grandparents do not have a common law right to visitation and the legislature has provided the statutory remedy under § 452.402. Grandparents must meet the requirements of the statute, and Appellants do not have standing to assert a grandparent visitation claim.

Appellants failed to state any claim under Chapter 452 which could permit them relief and the trial court properly dismissed the petition.

IV. Appellants have no standing to seek visitation under Section 452.375.5(5) since this is not an original proceeding and the probate court has exclusive jurisdiction.

Respondents contested Appellants' standing to seek custody or visitation at the trial court because the trial court could not grant custody or visitation since the probate court had exclusive jurisdiction. The trial court granted Respondents' motion to dismiss. Because Respondents do not believe that Appellants have standing to assert a third-party claim for custody or visitation pursuant to §452.375.5(5) at the trial court, Respondents do not believe Appellants have standing to appeal the dismissal of their petition. *In re Moreau*, 161 S.W.3d 402, 406-407 (Mo. App. S.D. 2005). Even assuming Appellants were proper parties to raise a third-party claim for custody or visitation, which is certainly not conceded here, Appellants have no standing to do so after custody has already been adjudicated. Appellants lack standing to seek visitation pursuant to § 452.375.5(5) with the trial court, and they therefore lack any standing to seek appellate relief. Exclusive jurisdiction over Rory's custody rests with the probate division and continues until the guardianship is terminated. *Id.* at 407. Because the trial court lacked jurisdiction to determine third-party custody or visitation, the appellate court also lacks jurisdiction over the appeal. *Id.* at 408.

Appellants ultimately relied on § 452.375.5(5) regarding their claim for visitation. This Court's decision in *T.Q.L.* did not create legal standing for Appellants. Appellants still have no standing to assert a claim for visitation pursuant to this section because: 1) the probate court retains exclusive jurisdiction; and 2) under any circumstance, the

decision in *T.Q.L.* is limited to an original proceeding for custody and visitation where no prior custody decision has been made.

The Western District provided an analysis of a third party's attempt to seek custody or visitation pursuant to § 452.375.5(5) based on the decision in *T.Q.L.* in *C.T.P.*, *supra*. The court reiterated the narrow circumstances under which a trial court is authorized to determine third-party child custody and visitation rights. *White v. White*, 293 S.W.3d 1 (Mo. App. W.D. 2009). The court goes on to question how far this Court intended to go in *T.Q.L.* in authorizing original proceedings to determine third-party child custody and visitation rights. The claim Appellants ask this Court to recognize through a third-party custody and visitation claim will be creating "breathtakingly broad" rights that the legislature did not intend and that will violate the U.S. Supreme Court's decision in *Troxell.*

Though Appellants have filed numerous actions attempting to gain custody or visitation with Rory, these attempts have all been subsequent to the original proceeding that determined Rory's custody -- the 2009 guardianship. Once custody was established, no independent third-party action lies.

The even more recent decision in *In Re the Matter of: J.D.S.* further confirms that Appellants do not have standing to assert a claim for visitation under § 452.375 (5). *See In Re the Matter of: J.D.S. n/k/a J.G.S.*, 482 S.W.3d 431 (Mo. App. W.D. 2016). In *J.D.S.*, Amy Duesenberg, J.D.S.'s paternal grandmother, dismissed a competing adoption petition and filed a request for visitation in a separate proceeding. Maternal grandparents, Mickie and Michael Smith, proceeded on their petition for adoption which

was granted. After Ms. Duesenberg was then awarded visitation on her separate petition, the Smiths filed a motion to set aside the award and to dismiss Ms. Duesenberg's petition for lack of standing. The motion was denied and the Smiths appealed. The appellate court remanded with instructions to vacate the judgment and dismiss Duesenberg's petition for lack of standing.

Though the *J.D.S.* decision was reached in part based on the Smiths' prior adoption of the child, the ruling regarding Ms. Duesenberg's lack of standing to assert a third-party visitation claim based on § 452.375.5(5) is directly on point. The court determined:

> The only section truly at issue is **Section 452.375.5, which allows a court to consider whether third-party custody or visitation is proper "[p]rior to awarding the appropriate custody arrangement in the best interest of the child."** The Smiths argue that Duesenberg is not entitled to standing to apply for visitation under Section 452.375.5 because **the section only allows third-party visitation to be considered in conjunction with an ongoing custody hearing**. **Duesenberg's Petition was filed as a separate action not as a motion within a custody proceeding**. Further, even if the request for visitation were filed as a motion within the adoption proceeding, it was not proper under Section 452.375. We agree. *J.D.S.* at 439.

When a question of standing was raised at the trial court, the court had a duty to determine the question of jurisdiction before reaching substantive issues. *White v. White*, 293 S.W.3d 1, 8 (Mo. App. W.D. 2009). The trial court properly dismissed Appellants'

petition because it did not have jurisdiction to grant Appellants the relief they were seeking. Appellants do not have standing to seek visitation in a separate action after custody has already been determined by the probate court.

RESPONSE TO APPELLANTS' POINT II

V. Dismissal with prejudice was appropriate.

The trial court correctly dismissed Appellants' petition with prejudice. Appellants did not request to amend their petition, so it is appropriate to assume Appellants offered the strongest presentation of their facts. *Black v. Rite Mortgage and Financial, Inc.*, 239 S.W.3d 165 (Mo. App. E.D. 2007). Appellants recited no facts that would support a claim for grandparent visitation pursuant to § 452.402, because no such facts exist in this case. 1) Rory's parents were unmarried; therefore, there will never be a dissolution action. 2) Neither parent is deceased. 3) Rory has been living exclusively with the guardians since before 2009 and certainly has not lived with Appellants over the last 24 months. Finally, Appellants state they see Rory on a regular basis and have a close bond with him.

With regard to the claim for visitation pursuant to § 452.375, Appellants did not file their petition in a dissolution of marriage action, and their petition was not an original proceeding for custody or visitation. Appellants presented the strongest petition they had supporting any claim for relief, and they are precluded from seeking visitation. It was proper for the trial court to dismiss the petition with prejudice because the fact that the guardianship is still in effect precludes Appellants from stating a claim.

Sympson v. Rogers, 314 S.W.2d 717 (Mo. 1958). Until and unless the guardianship is terminated, Appellants will never have standing to seek custody or visitation in any court.

The Court of Appeals has already determined that Appellants do not have standing to assert a claim in the guardianship proceeding.[2] Since December of 2009, Appellants have filed a multitude of claims seeking custody or visitation of Rory. The petition was properly dismissed with prejudice because Appellants do not have standing to seek third-party custody or visitation, Appellants cannot state a claim upon which relief can be granted, and the domestic trial court is without jurisdiction to grant third-party custody or visitation.

CONCLUSION

Respondents respectfully request that the appeal be dismissed or, in the alternative, that any claim or any relief sought by Appellants be denied and the trial court's dismissal of Appellants' petition be affirmed; and such further relief to Respondents as this Court deems just and appropriate.

[2] Appeal no. ED99700, *In the Interest of R.C.H.*, was dismissed by the Eastern District Court of Appeals on November 19, 2013 for lack of standing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of April, 2017, a true and correct copy of the foregoing Substitute Brief of Respondents Margaret Carroll and Bridget Carroll was electronically filed with the Clerk of Court to be served by operation of the Court's electronic filing system upon:

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Further, the undersigned states that said Substitute Brief contains five thousand two hundred ninety-four (5,294) words.

_____
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