No.

IN THE
Supreme Court of the United States

TERESA WARD COOPER,
AS NEXT FRIEND OF JANE DOE/D.T.,
Petitioner

v.

FIRST FINANCIAL BANK, N.A.,
Respondent

On Petition for Writ of Certiorari
To The Court of Appeals of Texas, Fifth District

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review.

Introductory Statement: Like most states, Texas adopted the Uniform Declaratory Judgment Act. As did other states, until now the Supreme Court of Texas consistently ruled that the Act confers no jurisdiction on the courts; instead, jurisdiction must be established independent of the Act. In this case, the Court of Appeals of Texas for the Fifth District was the highest court that entered an opinion and judgment. That court decided that Tex. Civ. Prac. & Rem. Code § 37.004 of the Act conferred jurisdiction on the trial court to make the declaration sought by Respondent Bank to remove a claimed uncertainty. Further, the Court of Appeals decided that Bank's admission of fact in its Motion for Summary Judgment that it "filed this action to protect its customer…" did not moot Bank's standing, an element of subject matter jurisdiction. As a result, Petitioner expended more than $15,000.00 in attorney's fees – for which a counterclaim was filed – that were not awarded to Petitioner, because she was not the prevailing party.

Question 1: When its petition was filed, did the Bank have standing to sue Petitioner/D.T. to remove a claimed uncertainty?

Question 2: After the Bank pled in its Motion for Summary Judgment that it "filed this action to protect its customer…", did the Bank's standing – if any – to sue Petitioner/D.T. for declaratory judgment become moot?

Question 3: Did Petitioner/D.T. have a 14th Amendment right to Equal Protection of the laws governing standing of a plaintiff to file a lawsuit and to perpetuate a lawsuit to judgment against her? If so, was Petitioner's/D.T.'s right violated?

Parties to the Proceeding.

The names of the parties appear on the cover.

Proceedings.

First Fin. Bank v. Cooper, No. 380-01566-2016, 380th District Court, Collin County, Texas. Judgment Entered Feb, 12, 2019.

Cooper v. First Fin. Bank, No. 05-19-00569-CV, Fifth Court of Appeals, Dallas, Texas. Judgment entered October 28, 2020; reh'g denied Dec. 10, 2020.

Cooper v. First Fin. Bank, No. 21-0082, Supreme Court of Texas. Petition for Review denied April 23, 2021; reh'g denied July 16, 2021.

Citations of Reports Entered in This Case.

Teresa Ward Cooper as Next Friend of Doe/D.T. v. First Fin. Bank, N.A., 05-19-00569-CV, 2020 WL 6304994, at *1 (Tex. App.—Dallas Oct. 28, 2020, pet. denied), reh'g denied (Dec. 10, 2020).

Basis for Jurisdiction.

Petitioner claims a right to equal protection of the laws under the Constitution of the United States. 28 U.S.C. § 1257(a). "[T]he Judges in every State shall be bound" by the "Constitution, and the Laws of the United States". U.S. Const. art. VI, cl. 2; Jeffers v. Clinton, 762 F. Supp. 257, 258 (E.D. Ark. 1991).

> The state proceedings ended in a declaratory judgment adverse to petitioners, an adjudication of legal rights which constitutes the kind of injury cognizable in this Court on review from the state courts.

ASARCO Inc. v. Kadish, 490 U.S. 605, 618, 109 S. Ct. 2037, 2046, 104 L. Ed. 2d 696 (1989); citing Nashville, C. & St. L. R. Co. v. Wallace, 288 U.S. 249, 261–265, 53 S.Ct. 345, 347–349, 77 L.Ed. 730 (1933).

A dispute over attorneys' fees, as in this case, is a live controversy. See Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 642-43 (Tex.2005)). Therefore, this Court has jurisdiction of this case pursuant to U.S. Const. art. III.

"Because we conclude that standing is a component of subject matter jurisdiction, it cannot be waived and may be raised for the first time on appeal." Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 445 (Tex. 1993).

The judgment sought to be reviewed was entered October 28, 2020: Cooper v. First Fin. Bank, No. 05-19-00569-CV, Fifth Court of Appeals, Dallas, Texas. Reh'g denied Dec. 10, 2020.

Cooper v. First Fin. Bank, No. 21-0082, Supreme Court of Texas. Petition for Review denied April 23, 2021; reh'g denied July 16, 2021. This case is filed within 90 days. R.13.1, .3.

Constitutional Provisions and Statutes.

Judicial Power, Tenure and Compensation

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

U.S. Const. art. III, § 1.

Jurisdiction of Courts

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2, cl. 1.

Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2.

Equal protection of the laws

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV

Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

28 U.S.C.A. § 2201 (West).

Excessive bail or fines; cruel and unusual punishment; remedy by due course of law

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Tex. Const. art. I, § 13

Division of powers; three separate departments; exercise of power properly attached to other departments

Sec. 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Tex. Const. art. II, § 1

Judicial power; courts in which vested

Sec. 1. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

Tex. Const. art. V, § 1.

§ 37.003. Power of Courts to Render Judgment; Form and Effect

(a) A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.

(b) The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.

(c) The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.

Tex. Civ. Prac. & Rem. Code Ann. § 37.003.

§ 37.004. Subject Matter of Relief.

(a) A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(b) A contract may be construed either before or after there has been a breach.

(c) Notwithstanding Section 22.001, Property Code, a person described by Subsection (a) may obtain a determination under this chapter when the sole issue concerning title to real property is the determination of the proper boundary line between adjoining properties.

Tex. Civ. Prac. & Rem. Code Ann. § 37.004.

§ 37.009. Costs

In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney's fees as are equitable and just.

Tex. Civ. Prac. & Rem. Code Ann. § 37.009.

Statement of the Case.

D.T. and Respondent Bank executed a 'Safe Deposit Box Lease' that said, "…we agree to this lease, including the Terms and Conditions..." V R.R. at Pet. Ex. A. According to the Terms and Conditions, the relationship of Respondent Bank to D.T. is "limited to [responsibilities and liabilities] of someone who leases property to another." Id. It was agreed that the Bank had no "possession or control of the safe deposit box or its contents…" Id.

In the context of this relationship, on April 8, 2016, the Bank filed a Petition for Declaratory Judgment (I C.R. at 13) that sought "a judgment declaring certain the rights of the parties under the Safe Deposit Box Lease (the "Lease") dated July 7, 2015." Id.

Subsequently, on January 17, 2019, in its Motion for Summary Judgment, Bank wrote that it "filed this action to protect its customer…" I C.R. at 120, ¶3.

Petitioner filed 'Defendant's Original Counter Petition' on November 21, 2018, to assert her claim for attorney's fees and costs. I C.R. at 69. At trial, Petitioner (Defendant and Respondent, below) adduced evidence of reasonable and necessary attorney's fees in the amount of $15,196.53. IV R.R. at 73 (line 21) - 74 (line 2). The Trial Court denied Petitioner's counterclaim for attorney's fees stating that Petitioner was "not the prevailing party". Appendix A.

In her Response to the Bank's Motion for Summary Judgment, Petitioner complained that the Bank lacked standing. I C.R. at 155-157. The Trial Court implicitly overruled Petitioner's complaint of standing. In her opening Brief on appeal, Petitioner

complained that the Bank lacked standing. Citing § 37.004, Tex. Civ. Prac. & Rem. Code as conferring jurisdiction, the Court of Appeals affirmed that the Bank asserted facts to establish jurisdiction. See Appendix C. "Appellant argues the Bank failed to plead sufficient facts to show it had standing to bring this action." Id. "The attempted appointment created contractual uncertainties about whether D.T. had effectively granted a third-party agency rights." Id.

> Appellant points to a statement made by the Bank in an earlier motion for summary judgment that it "filed this action to protect its customer" to argue the Bank does not have standing to assert D.T.'s rights. This statement was made by the Bankto explain its motivation for bringing the suit… Because the Bank viewed the requested declaration as benefiting D.T., the Bank also asked the trial court to deny appellant's counterclaimfor her attorney's fees. Nothing… suggests it was relying on D.T.'s rights under the Lease as its basis for standing to bring this action. As a party to the contract, the Bank had its own rights and standing. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a).

Appendix C.

Petitioner raised the issue at the Supreme Court of the State of Texas in her Petition for Discretionary Review, which was denied. Appendix F. Petitioner re-urged that the Bank lacked standing in a Motion for Rehearing, that was also denied by the Texas Supreme Court. Appendix G.

Argument.

As of 1969, over 30 states had adopted some form of the Uniform Declaratory Judgments Act."[40] Petitioner contends that the legal issues at stake in this Petition are of national importance.

In its Motion for Summary Judgment, Bank wrote that it "filed this action to protect its customer…" I C.R. at 120, ¶3 (Clerk's Record Volume 1 of 1 (06/10/19)). "A statement of fact in a motion for summary judgment may be viewed as a judicial admission."[2] This Court said that to have standing there must be a "controversy, between parties having adverse legal interests…to warrant the issuance of a declaratory judgment."[3] In this case, there was no adverse legal interest. By the summary judgment phase, the case had become moot. "We must grant the plea to the jurisdiction if the plaintiff's pleadings affirmatively negate the existence of jurisdiction."[4]

This Court recently addressed the question of whether a party had standing.

> At all stages of litigation, a plaintiff must maintain a personal interest in the dispute. The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether

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[1] See Jefferson v. Asplund, 458 P.2d 995, 997 (Alaska 1969).

[2] Crawford v. Texas Dept. of Transp., 03-04-00029-CV, 2004 WL 1898257, at *7 (Tex. App.—Austin Aug. 26, 2004, no pet.); citing Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 568 (Tex.2001).

[3] MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127, 127 S. Ct. 764, 771, 166 L. Ed. 2d 604 (2007).

[4] Heckman v. Williamson County, 369 S.W.3d 137, 150 (Tex. 2012).

it exists throughout the proceedings.

Uzuegbunam v. Preczewski, 141 S. Ct. 792, 796, 209 L. Ed. 2d 94 (Mar. 8, 2021).

The State courts have adopted this Court's jurisprudence on standing.[5] "A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal."[6]

"[W]e have interpreted the Uniform Declaratory Judgments Act, Tex.Civ.Prac. & Rem. Code §§ 37.001–.011, to be merely a procedural device for deciding cases already within a court's jurisdiction rather than a legislative enlargement of a court's power, permitting the rendition of advisory opinions."[7] "Texas courts, like federal courts, have no jurisdiction to render" "[a]n opinion… in a case brought by a party without standing" because such an opinion "is advisory".[8] "The [Declaratory Judgment] Act does not purport to set a higher standard than that set by the general doctrine of standing, and it cannot be lower, since courts' constitutional jurisdiction cannot be enlarged by statute."[9]

The Court of Appeals reliance on § 37.004, Tex. Civ. Prac. & Rem. Code as conferring

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[5] See Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 444–46 (Tex. 1993) (comparing the likenesses of State jurisdiction to Federal jurisdiction, and showing no difference).

[6] Griffin v. Birkman, 266 S.W.3d 189, 193-94 (Tex. App.-Austin 2008, pet. denied); citing In re Kellogg Brown & Root, 166 S.W.3d 732, 737 (Tex.2005).

[7] Tex. Air Control Bd., 852 S.W.2d at 444.

[8] Id.

[9] Fin. Comm'n of Tex. v. Norwood, 418 S.W.3d 566, 582, n.83 (Tex. 2013).

jurisdiction of the Bank's claim for declaratory judgment is a departure from all precedent.[10]

> "The provisions of [the Act] authorizing the bringing of suit for a declaratory judgment, do not in any way change the law as to jurisdiction of Texas Courts."

Kadish v. Pennington Associates, L.P., 948 S.W.2d 301, 304 (Tex. App.—Houston [1st Dist.] 1995, no writ); citing Connor v. Collins, 378 S.W.2d 133, 134 (Tex.App.—San Antonio 1964, writ dism'd). The Declaratory Judgment Act confers no jurisdiction.

> Standing, ripeness, and mootness are questions of justiciability, a doctrine rooted in separation of powers. *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 147 (Tex. 2012). The doctrine of separation of powers "bars our courts from rendering advisory opinions and limits access to the courts to those individuals who have suffered an actual, concrete injury." *Id.* (citing *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993))… "Justiciability is a matter of concern in every civil case, and remains a live concern from the first filing through the final judgment." *Id.*

Morath v. La Feria ISD, 03-17-00338-CV, 2018 WL 6729850, at *4 (Tex. App.—Austin Dec. 21, 2018, no pet.).

Petitioner has been denied "the equal protection of the laws". See U.S. Const. amend. XIV; U.S. Const. art. VI, cl. 2 (Supremacy Clause).

[10] UDJA doesn't extend jurisdiction. See Best v. Best, 2015 WY 133, ¶ 18, 357 P.3d 1149, 1153 (Wyo. 2015).

This Court has said that, "When an appeal is afforded…, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause."[11] In this case, the State courts cannot arbitrarily or capriciously deny Petitioner the constitutional protection against being sued by a plaintiff that has no standing, without violating the Equal Protection Clause. The precedents cited herein show that the State courts routinely and ardently protected other defendants from plaintiffs who had no constitutional standing to bring a lawsuit under the Declaratory Judgment Act. Those same State courts stated that the Act does not confer jurisdiction, a direct contradiction of the State courts in this case.

The law requires that the Bank's Declaratory Judgment action be dismissed for want of jurisdiction. There will still be a controversy regarding Petitioner's attorney's fees and costs authorized by Tex. Civ. Prac. & Rem Code § 37.009, that should be remanded.[12] "The controversy is live because an affirmative answer would necessitate a remand to the trial court to consider whether an award of attorney's fees is appropriate in light of the changed status of prevailing parties."[13]

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[11] Lindsey v. Normet, 405 U.S. 56, 77, 92 S. Ct. 862, 876, 31 L. Ed. 2d 36 (1972).

[12] Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 643 (Tex. 2005).

[13] Id.

PRAYER

Petitioner prays that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

/s/ Kenneth M. Stillman

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Appendix A.

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CAUSE NO. 380-01566-2016

IN THE 380TH DISTRICT COURT OF
COLLIN COUNTY, TEXAS

FIRST FINANCIAL BANK, N.A., Petitioner,

v.

JANE DOE, Respondent.

FINAL JUDGMENT

On the 11th day of February, 2019, this case came on for trial. Neither party having demanded and paid for a jury, the case was heard by the Court. Petitioner appeared through an authorized representative and by and through counsel. Respondent Jane Doe, a/k/a D.T., appeared through next friend and by and through counsel. The guardian ad litem also appeared. The parties announced ready for trial and evidence was received and argument was presented. Based upon same, the Court finds that the Appointment of Deputy dated October 29, 2015 is ineffective under the terms of the Safe Deposit Box Lease dated July 7, 2015 because: (1) it does not indicate whether it is intended to survive D.T.'s incapacity; and (2) it lacks an acknowledgement by D.T.

IT IS THEREFORE DECLARED that the Appointment of Deputy dated October 29, 2015is ineffective to give Mr. Cooper access to D.T.'s safe deposit box.

Petitioner has not requested attorney's fees from Respondent, and none are awarded.

Respondent is not the prevailing party and her counterclaim is denied.

All costs of court are taxed against the party incurring same, except the ad litem fee of $1,000.00 shall be paid by Petitioner. This judgment disposes of all claims and all parties and is final and appealable.

Signed this 12th day of February, 2019.

/s/ BENJAMIN N. SMITH

JUDGE PRESIDING

Appendix B.

IN THE COURT OF APPEALS

FIFTH DISTRICT OF TEXAS AT DALLAS

NO. 05-19-00569-CV

TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T., Appellant

V.

FIRST FINANCIAL BANK, N.A., Appellee

On Appeal from the

380th Judicial District Court

Collin County, Texas

Trial Court Cause No. 380-01566-2016

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In accordance with the July 8, 2019 Order from the Court of Appeals, Fifth District of Texas at Dallas, the trial court makes the following findings of fact and conclusions of law in the above-referenced case.

FINDINGS OF FACT

1. Petitioner First Financial Bank, N.A., leased a safe deposit box to Respondent JaneDoe on July 7, 2015 in Acton, Texas.

2. The safe deposit box lease[1] (hereinafter "the lease") included a form with whichJane Doe could have appointed a deputy who would have access to the safe deposit box.

3. When Jane Doe signed the lease, she chose not to appoint a deputy with authority to access the safe deposit box, although she had the ability and opportunity to do so.

4. The lease provided that the subsequent appointment of a deputy would not be effective unless: (a) the appointment indicated whether or not it was intended tooperate as a power of attorney with authority that would survive Jane Doe's subsequent disability or incapacity; and (b) it was acknowledged by Jane Doe.

5. Jay Sandon Cooper subsequently presented a document titled *First Addendum toSafe Deposit Box Lease—Appointment of Deputy*[2] (hereinafter "the appointment")to Petitioner and demanded access to Jane Doe's safe deposit box.

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[1] Admitted into evidence at trial as Petitioner's Exhibit "A."

[2] Admitted into evidence as Petitioner's Exhibit "F,"

6. The appointment, dated October 29, 2015, did not indicate whether or not the appointment was intended as a power of attorney with authority that would survive Jane Doe's subsequent disability or incapacity.

7. The appointment was not acknowledged by Jane Doe.

CONCLUSIONS OF LAW

1. The appointment was not effective under the lease to grant Jay Sandon Cooperaccess to Jane Doe's safe deposit box because the appointment failed to specify whether it was intended to operate as a power of attorney and because it was not acknowledged by Jane Doe.

2. Since the petition for declaratory judgment was granted, Counter-Petitioner Teresa Ward Cooper, as Next Friend of Jane Doe, was not the prevailing party, and her claim for an award of attorney's fees and costs should have been, and was, denied.

Signed on 7 August 2019.

s/ BENJAMIN N. SMITH

PRESIDING JUDGE

380TH JUDICIAL DISTRICT COURT

COLLIN COUNTY, TEXAS

Appendix C.

AFFIRMED and Opinion Filed October 28, 2020

THE STATE OF TEXAS

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-19-00569-CV

TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T., Appellant

V.

FIRST FINANCIAL BANK, N.A., Appellee

On Appeal from the 380th Judicial District Court

Collin County, Texas

Trial Court Cause No. 380-01566-2016

MEMORANDUM OPINION

Before Justices Whitehill, Pedersen, III, and Reichek

Opinion by Justice Reichek

Teresa Ward Cooper, as next friend of Jane Doe/D.T., appeals the trial court's declaratory judgment in favor of First Financial Bank, N.A. (the "Bank"). Appellantbrings five issues, with multiple sub-issues, generally contending the trial court erred in declaring that a document attempting to appoint Jay Sandon Cooper, appellant's husband, as D.T.'s deputy for purposes of a safe deposit box lease was ineffective and in failing to award appellant her attorney's fees. In addition, appellant requeststhat all copies of a medical document submitted by the Bank in this case be turned over to D.T. and expunged from the court's record. For the reasons that follow, weaffirm the trial court's judgment and deny appellant's request.

Background

On July 7, 2015, D.T. executed a safe deposit box lease with the Bank (the "Lease"). The Lease provided for the appointment of a deputy with authority to acton D.T.'s behalf in connection with the Lease, the safe deposit box, and the box's contents. D.T. left the appointment space blank. The Lease further provided that D.T. could appoint a deputy in the future by written notice so long as that notice (1) was signed by D.T. along with an acknowledgement, (2) specifically referenced the Lease, (3) indicated whether or not the appointment was intended as a power of attorney with authority surviving D.T.'s disability or incapacity, and (4) included orwas accompanied by the signature of the deputy accepting the appointment and confirming the Lease.

Approximately two months after D.T. entered into the Lease, Jay Sandon Cooper presented the Bank with a power of attorney indicating he had beenappointed as D.T.'s attorney-in-fact. One of the powers listed in the document was "banking and other financial institution transactions." Based on this power of attorney, Cooper[1] requested access to D.T.'s safe deposit box.

According to Dereece Howell, the Bank's executive vice-president and chiefoperations officer, the Bank had a handwritten statement from D.T. in its files withdrawing a previous power of attorney she had granted to Cooper. Cooper's new power of attorney was not filed in Hood County, where the Bank was located, whichwas required under Bank

[1] All references to "Cooper" are to Jay Sandon Cooper. Teresa Ward Cooper is referred to as"appellant."

policy. In addition, Howell testified Cooper provided the Bank with a physician's statement predating D.T.'s signature on the new power of attorney, declaring that D.T. was incapable of making executive decisions.[2] The Bank informed Cooper it would not accept the new power of attorney and he was not given access to D.T.'s safe deposit box.

Six weeks later, Howell spoke with D.T. by phone. Howell and D.T. discussed closing D.T.'s account and allowing Cooper access to the safe deposit box. Following that conversation, Howell sent D.T. a letter enclosing a form for D.T. to appoint Cooper as her deputy. Instead of adding Cooper as someone with authorityunder the Lease, the form sent by the Bank was drafted to have Cooper act as D.T.'sdeputy for the purposes of emptying the safe deposit box and terminating the Lease.The form contained a hold-harmless agreement in favor of the Bank for any claims arising out of the Bank's reliance on D.T.'s appointment of Cooper as her deputy.

Cooper testified that D.T. refused to sign the form sent by the Bank because of the hold-harmless language. Instead, Cooper drafted a different appointment document that merely stated he was appointed as D.T.'s deputy. Although Cooper's signature on the document was acknowledged before a notary, D.T.'s signature wasnot. Howell testified the Bank was concerned about the fact that D.T.'s

[2] Although the physician's statement was not introduced into evidence, Howell testified regarding its contents. Appellant's objections to this testimony were overruled and appellant does not challenge that ruling on appeal.

signature onthe appointment was not notarized, but it wanted to try to make something work for D.T. On November 2, Howell sent Cooper an email stating that, because the deputyappointment form had not been acknowledged before a notary public, it was important for her to speak directly to D.T. Howell further stated that, if D.T. confirmed her signature on the appointment document and acknowledged she wished to appoint Cooper as her deputy, the Bank would waive the other appointment requirements set forth in the Lease and accept Cooper as D.T.'s deputy. Howell testified that, in response to this email, she was told that she would not be allowed to communicate with D.T. and Cooper began sending her threatening lettersand emails.

The Bank filed this suit on April 8, 2016, seeking a declaratory judgment that the deputy appointment form tendered by Cooper was ineffective because it did notmeet the requirements set out in the Lease. The Bank attached numerous documentsto its petition, including the Lease, the purported new power of attorney, the deputy appointment tendered by Cooper, and the physician's statement declaring that D.T. was not capable of making executive decisions.

On the same day it filed its original petition, the Bank also filed a motion forthe appointment of a guardian ad litem and a motion to seal the court's records to protect D.T.'s identity and privacy. The trial court granted the sealing motion and appointed a guardian ad litem for D.T. In its order appointing the ad litem, the courtstated it appeared from the record that D.T. was an elderly person who had been diagnosed with dementia and may be vulnerable to identity theft and other abuses.

Appellant answered as D.T.'s next friend with a general denial. She also filed a counterclaim seeking attorney's fees. Appellant moved the court to remove the guardian ad litem contending the appointment was groundless and there was no indication that her interests as next friend were adverse to D.T.'s interests. The trial court denied appellant's motion.

The court conducted a bench trial at which Howell, Cooper, and appellant testified. After hearing the evidence, the court concluded the deputy appointment was not effective under the terms of the Lease. The court also denied appellant's counterclaim for attorney's fees. Counsel for the Bank informed the court that the Bank was willing to pay the fees for the ad litem and the trial court's judgment assessed the ad litem's fees against the Bank.

In its findings of fact and conclusions of law, the court stated the deputy appointment failed because it did not specify whether it was intended to operate as a power of attorney surviving D.T.'s incapacity or disability and D.T.'s signature was not acknowledged. The court further stated that, because it granted the Bank's petition for declaratory judgment, appellant "was not the prevailing party, and her claim for an award of attorney's fees should have been, and was, denied." Appellant filed a request for specific additional and amended findings of fact, but the trial court made no further findings.

Analysis

I. Subject Matter Jurisdiction

We begin with appellant's third issue in which she contends the trial court's judgment is void for

lack of subject matter jurisdiction. Appellant argues the Bank failed to plead sufficient facts to show it had standing to bring this action. The Bank's petition states it was seeking a declaratory judgment pursuant to chapter 37 of the Texas Civil Practice and Remedies Code. The Bank sought a declaration that the deputy appointment tendered by Cooper was ineffective to modify the Lease agreement between it and D.T. because it did not meet the appointment requirementsset forth in the Lease.

Section 37.004 of the civil practice and remedies code states that a person "interested" under a contract or whose "rights, status, or other legal relations" are affected by a contract, may have any question regarding the construction or validityof the contract determined and obtain a declaration of rights, status, or other legal relations thereunder. TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a). The Bank, as a party to the Lease, clearly has standing to request the trial court make a determination of whether the deputy appointment tendered by Cooper was a valid modification of the Lease. *Id.* The attempted appointment created contractual uncertainties about whether D.T. had effectively granted a third-party agency rights. An actual controversy existed based on the purported agent's demands to exercise rights under the Lease and his threats when those demands were not met. *See Fleming v. Ahumada*, 193 S.W.3d 704, 716 (Tex. App.—Corpus Christi–Edinburg 2006, no pet.); *Stark v. Benckenstein*, 156 S.W.3d 112, 117 (Tex. App.—Beaumont 2005, pet. denied).

Appellant points to a statement made by the Bank in an earlier motion for summary judgment that it "filed this action to protect its customer" to

argue the Bank does not have standing to assert D.T.'s rights. This statement was made by the Bank to explain its motivation for bringing the suit and its decision to not seek an award of its attorney's fees. Because the Bank viewed the requested declaration as benefiting D.T., the Bank also asked the trial court to deny appellant's counterclaim for her attorney's fees. Nothing in the Bank's discussion of attorney's fees suggestsit was relying on D.T.'s rights under the Lease as its basis for standing to bring this action. As a party to the contract, the Bank had its own rights and standing. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004(a).

Appellant next contends the trial court lacked subject matter jurisdiction because any declaration regarding the deputy appointment was moot. Appellant argues the durable power of attorney Cooper tendered to the Bank two months beforethe attempted appointment was sufficient to grant Cooper access to the safe deposit box and, therefore, the trial court's declaration does not resolve the controversy between the parties.

The general test in Texas for whether a suit is appropriate for judicialresolution is that there must be a real controversy between the parties which will be actually determined by the judicial declaration sought. *Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 163–64 (Tex. 2004); *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996). An issue is moot if a party seeks a judgment on a controversy that does not really exist, or a judgment that, when rendered, cannothave any practical legal effect on a then-existing controversy. *Seals v. City of Dallas*,249 S.W.3d 750, 754 (Tex. App.—Dallas 2008, no pet). As discussed above, a real controversy

existed regarding whether the deputy appointment tendered by Cooper to the Bank was an effective modification of the Lease. The trial court's declarationresolved this controversy by determining the appointment was ineffective.

Appellant's argument that the declaration fails to resolve the controversy because Cooper's power of attorney grants him access to the safe deposit box is a non sequitur. The power of attorney and the deputy appointment are two separate alleged grants of agency by D.T. to Cooper. The Bank rejected Cooper's purportedpower of attorney, and appellant has asserted no affirmative claims or defenses against the Bank contending that rejection was wrongful. Nor did appellant seek a judicial determination that Cooper's power of attorney was valid and enforceable.[3] Accordingly, the only means for Cooper to access the safe deposit box at issue is the attempted appointment of him as D.T.'s deputy under the terms of the Lease. The trial court's judgment resolves this matter.

[3] In her brief, appellant states the Bank's incorporation of the power of attorney in its petition was a "judicial admission." Although unclear, appellant appears to contend that the Bank's attachment of the power of attorney to its pleading constituted a judicial admission of its validity and enforceability. Appellant cites no authority for this proposition. In addition, at various points throughout her brief, appellant either assumes the enforceability of Cooper's power of attorney or presents argument regarding its independent validity. Because issues of the validity and enforceability of the power of attorney were never presented to the trial court for determination, this issue has not been preserved for our review. *See In re R.J.P.*, 391 S.W.3d 677, 678 (Tex. App.—Dallas 2013, no pet.).

Finally, appellant argues the trial court's

declaration did not resolve the "underlying issue" because it "leaves the Bank in control of D.T.'s safe deposit box." A matter is not unresolved simply because a party does not agree with the outcome. Although appellant complains that D.T. is still not in possession of the contents of her safe deposit box, the trial court's declaration does not prevent D.T. fromaccessing the box. The declaration states only that the deputy appointment tenderedby Cooper in October 2015 was ineffective to give him access to the box. This wasthe only issue the trial court was asked to decide. We resolve appellant's third issueagainst her.

II. Necessary Parties

In her second issue, appellant contends the trial court's declaration "does notresolve the claimed dispute for non-joinder of Mr. Cooper." Appellant states that Cooper could "reasonably argue" the judgment is not binding on him as a non-party to the suit. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.006(a). Based on this theoretical future argument, appellant contends the declaration is an impermissible advisory opinion. Appellant cites *Kodiak Resources, Inc. v. Smith*, 361 S.W.3d 246 (Tex. App.—Beaumont 2012, no pet.) in support of this contention.

In *Kodiak Resources*, some of the lessors under a mineral lease brought a declaratory judgment action against the lessees to terminate the lease. *Id.* at 248. The appellate court addressed the issue of whether it was an abuse of discretion forthe trial court to deny the defendant lessees' motion to join the remaining lessors asnecessary parties. *Id.* Unlike the facts presented in *Kodiak Resources*, Cooper is nota party to the lease contract at issue.

Also unlike the defendants in *Kodiak Resources*, appellant never sought to join Cooper as a party in this suit. An allegeddefect in parties must be raised in the trial court by a verified pleading. TEX. R. CIV. P. 93(4); *see also BCH Dev. Corp. v. Bee Creek Hills Neighborhood Ass'n*, No 03-96-00416-CV, 1996 WL 727385, at *6 (Tex. App.—Austin Dec. 19, 1996, writ denied) (not designated for publication). Appellant's answer in this case was only an unverified general denial. Appellant did not raise the issue of Cooper as a necessary party to this action until her brief on appeal. Accordingly, appellant has waived this issue. *Brooks*, 141 S.W.3d at 163.

As for appellant's contention that the trial court's judgment constitutes an advisory opinion, we have already concluded the court's declaration resolves the controversy between the Bank and appellant regarding the effectiveness of the attempted modification of the Lease. This is a final and complete adjudication of the dispute between the only two parties to the Lease. *See id.* at 162. We resolve appellant's second issue against her.

III. Effectiveness of the Deputy Appointment

In her fourth issue, appellant contends the trial court erred in granting the declaratory judgment in favor of the Bank. Appellant does not appear to dispute that the deputy appointment document tendered by Cooper fails to meet the requirements for a valid appointment under the terms of the Lease. Appellant argues instead thatthe deputy appointment and the power of attorney must be construed together and, when combined, they contain all the necessary elements for a valid appointment. Appellant contends the trial court "committed harmful error when it did not considerthe

effect of the power of attorney on the Lease and deputy appointment." She further states, without discussion or analysis, that the power of attorney was part of the "entire agreement." Neither the power of attorney itself nor the circumstances surrounding its creation or the creation of the Lease supports appellant's position.

"Under generally accepted principles of contract interpretation, all writings that pertain to the same transaction will be considered together, even if they were executed at different times and do not expressly refer to one another." *DeWitt Cty. Elec. Co-op., Inc. v. Parks*, 1 S.W.3d 96, 102 (Tex. 1999). In addition, separate writings may be construed together if the connection appears on the face of the documents by express reference or by internal evidence of their unity. *Kartsotis v. Bloch*, 503 S.W.3d 506, 516 (Tex. App.—Dallas 2016, pet. denied).

The Lease is a contract between the Bank and D.T. Under the terms of that contract, if D.T. wished to modify the Lease to appoint a deputy, she was required to submit a form that met certain requirements. The deputy appointment made the subject of this suit was the form submitted for that purpose.

The purported power of attorney is an entirely separate agency designation unrelated to the contract between the Bank and D.T. The power of attorney and theLease do not reference each other and they were not created at or near the same time. Nor were they created as part of the same transaction. The same is true for the power of attorney and the deputy appointment. Although both the deputy appointment andthe power of attorney

pertain to a grant of agency authority, the deputy appointmentrelates to the Lease alone, whereas the power of attorney pertains to a full range of matters and transactions for which a power of attorney may be granted. The Bank rejected the power of attorney, and it played no role in the discussions among the Bank, D.T., and the Coopers about the deputy appointment. Regardless of whetherit is ultimately determined that the power of attorney is valid – a matter not before us – it cannot be read and construed together with the Lease or deputy appointmentbecause these documents were executed at different times, between different parties, for different purposes, and in the course of different transactions. *See Vinson v. Brown*, 80 S.W.3d 221, 231 (Tex. App.—Austin 2002, no pet.).

In the alternative, appellant contends the Bank has waived strict compliance with the deputy appointment requirements set forth in the Lease based on its communications with D.T. and Cooper. Waiver is an affirmative defense and the party asserting it bears the burden of proof.[4] *In re State Farm Lloyds*, 170 S.W.3d 629, 634 (Tex. App.—El Paso 2005, orig. proceeding). The elements of waiver include (1) an existing right, (2) the party's actual knowledge of its existence, and (3) the party's actual intent to relinquish that right, or intentional conduct inconsistent with claiming that right. *Safeco Ins. Co. of Am. v. Clear Vision Windshield Repair, LLC*, 564 S.W.3d 913, 920 (Tex. App.—Houston [14th Dist.]

[4] Although appellant failed to properly plead waiver as an affirmative defense, we address this issue to the extent it appears to have been tried by consent. *See Haas v. Ashford Hollow Cmty. Improvement Ass'n, Inc.*, 209 S.W.3d 875, 884 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

2018, no pet.). For waiver to be established by conduct, that conduct must be unequivocally inconsistent with claiming a known right. *Van Indep. Sch. Dist. v. McCarty*, 165 S.W.3d 351, 353 (Tex. 2005).

Appellant first points to the deputy appointment form the Bank sent to D.T. containing the hold-harmless provision. Appellant notes that this form had no language regarding whether it was intended to operate as a power of attorney surviving D.T.'s incapacity or disability. Accordingly, appellant contends the Bankwaived the requirement that the deputy appointment contain a power of attorney provision.

Although the deputy appointment form sent by the Bank did not include language regarding whether it was intended to operate as a power of attorney surviving D.T.'s incapacity or disability, this was because the form also contained a hold-harmless provision and stated the Lease was terminated once Cooper withdrewthe contents of the safe deposit box. With the Lease terminated, there was no need for the appointment to define the nature of Cooper's authority on an ongoing basis. In contrast, the unacknowledged appointment form tendered by Cooper simply stated he was appointed as D.T.'s deputy, leaving the lessor/lessee relationship between the Bank and D.T. unchanged. Cooper's form put the Bank in the position of determining, at its own peril, the nature and extent of Cooper's continuing agency. Because the hold-harmless provision and termination language in the Bank's proposed form obviated its need for the power of attorney provision, the trial court could properly conclude the proposed form was not an unequivocal

waiver of the Bank's right to demand, in the absence of those things, a form meeting the requirements of the Lease.

Appellant also points to Howell's email stating the Bank would accept the deputy appointment Cooper drafted if Howell was able to speak with D.T. and personally confirm D.T.'s desire to appoint Cooper as her deputy and her signature on the document. It is undisputed, however, that no one at the Bank was permitted to speak with D.T. following this email. As with the Bank's proposed deputy appointment form, it is clear the Bank was willing to forgo certain requirements for the deputy appointment only if other specified conditions were met. Because it is undisputed the conditions were not met, the evidence supports a finding that the Bank did not waive its right to insist on compliance with the terms of the Lease.

As a final alternative, appellant contends the trial court should have ruled in her favor as a matter of equity to avoid a "patently unfair result." Appellant fails toexplain how the trial court could, in the name of equity, ignore long settled principlesof contract law to rule in her favor. Even in matters of equity, it is an abuse of discretion for the trial court to rule without regard to guiding legal principles. *See Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998).

Appellant notes the trial court failed to make additional findings of fact she requested regarding the power of attorney and communications from the Bank. Appellant contends, without argument or authority, that this evidence supports an equitable judgment in her favor. She further contends the court's failure to make the requested findings

prevented her from adequately presenting her case on appeal. The requested additional findings about which appellant complains include findingsthat (1) the power of attorney was presented to the Bank approximately two months after the Lease was executed and two months before the deputy appointment was tendered, (2) paragraph 5 of the power of attorney states that it grants Cooper the power of "banking and other financial institution transactions," (3) the Bank was willing to accept a deputy appointment in a form other than the form prescribed by the Lease as demonstrated by its communications with D.T. and Cooper, and (4) the deputy appointment presented to the bank by Cooper did not comport with the specific appointment requirements set forth in the Lease. None of these facts was indispute. A court need not make findings of fact on undisputed matters. *Limbaugh v. Limbaugh*, 71 S.W.3d 1, 5 (Tex. App.—Waco 2002, no pet.). Furthermore, additional findings are required only if they relate to ultimate or controlling issues. *See Rich v. Olah*, 274 S.W.3d 878, 886 (Tex. App.—Dallas 2008, no pet.). An ultimate fact issue is one essential to the cause of action that would have a direct effect on the judgment. *Id.* Most of the above requested findings pertain only to evidentiary matters rather than ultimate or controlling issues. As such, the trial courtwas not required to make the requested findings. *Id.*

The remaining requested finding about which appellant complains was that the Bank did not give the power of attorney "any effect upon the [deputy] appointment" because it was not filed of record in Hood County and, therefore, the power of attorney "was not considered by the court as having any effect upon the appointment." It is undisputed that one of

the reasons the Bank rejected Cooper's power of attorney was that it was not filed in Hood County. But Howell testified attrial that the Bank rejected the power of attorney for multiple reasons, including D.T.'s withdrawal of a previous power of attorney granted to Cooper and a physician's opinion predating the power of attorney stating that D.T. was not capable of making executive decisions. Appellant's requested finding suggests that D.T.'s failure to file the power of attorney in Hood County was the sole basis for its rejection and, as such, it is contrary to the uncontroverted evidence presented by theBank at trial. A trial court is not required to make additional findings that are unsupported by the record. *Id.* In addition, the reasons for the Bank's rejection of the power of attorney are irrelevant to the ultimate and controlling issues in this case. *Id.* Accordingly, we resolve appellant's fourth issue against her.

IV. Attorney's Fees

In her first issue, appellant contends the trial court's judgment is "defective" and its findings of fact and conclusions of law are "inadequate to protect D.T.'s rightto appeal the denial of attorney's fees and costs in this litigation." In the alternative, she contends the trial court erred in failing to award her reasonable and necessary fees and costs.

Appellant contends the trial court's judgment and findings are vague and sheis "left to guess" the reason why her request for attorney's fees was denied. The judgment states that appellant "is not the prevailing party and her counterclaim [for attorney's fees] is denied." In its findings and conclusions, the court stated "[s]incethe petition for declaratory judgment was granted, Counter-

Petitioner Teresa Ward Cooper, as Next Friend of [D.T.], was not the prevailing party, and her claim for anaward of attorney's fees and costs should have been, and was, denied." Appellant argues these statements are ambiguous because they do not state her claim for fees was denied *because* she was not the prevailing party.

Although appellant filed a request for additional and amended findings of fact, the only findings she requested on the issue of attorney's fees concerned thereasonableness and necessity of the fees she incurred. She submitted no additional or amended findings addressing the basis of the trial court's decision to deny her claim. Because she did not make the court aware of her complaint, appellant failedto preserve this issue. *See Tagle v. Galvan*, 155 S.W.3d 510, 516 (Tex. App.—SanAntonio 2004, no pet.).

Even if this issue had been preserved, there is nothing ambiguous about the reason for the trial court's denial of appellant's claim for fees. The only reason for the court to recite that appellant did not prevail – a fact made obvious by the remainder of the judgment, findings, and conclusions – was to explain the basis of its decision to deny her claim for fees. The grant or denial of attorney's fees in a declaratory judgment action is within the discretion of the trial court, and its decisionwill not be reversed on appeal absent a clear showing that this discretion was abused. *Ochoa v. Craig*, 262 S.W.3d 29, 33 (Tex. App.—Dallas 2008, pet. denied). Although a trial court may award attorney's fees to the non-prevailing party in a declaratory judgment action, the court is well within its discretion to deny an awardof fees based on the outcome of the case. *Id.*;

Brazoria Cty. v. Tx. Comm'n on Envtl.Quality, 128 S.W.3d 728, 744 (Tex. App.—Austin 2004, no pet.). We resolve appellant's first issue against her.

V. Expunction

In her fifth issue, appellant requests we order the court's files expunged and the Bank's records purged to remove the physician's statement regarding D.T.'s mental incapacity. Appellant contends the document is protected by the physician-patient privilege under rule 509 of the Texas Rules of Evidence. *See* TEX. R. EVID. 509. In making her request for expunction, appellant relies on *In re GMAC Finance,L.L.C.*, 167 S.W.3d 940 (Tex. App.—Waco 2005, orig. proceeding). Appellant's reliance is misplaced.

In re GMAC was an original proceeding in which the appellate court addresseda request by a party to expunge from the court's record a privileged document inadvertently attached to the party's response to a petition for writ of mandamus. *Id.*at 941. Contrary to appellant's argument, the court concluded it had no authority togrant the expunction request. *Id.* The court did, however, seal the record and, relying on rule 193.3(d) of the Texas Rules of Civil Procedure, ordered the parties to return all copies of the document to the attorney who inadvertently disclosed it. *Id.* at 942.

The record in this case has already been sealed. Unlike the document at issuein *In re GMAC*, the allegedly privileged document at issue here was not filed for thefirst time in the appellate court. The doctor's statement was made a part of multiplefilings in the trial court. Although appellant raised the issue of the physician-patientprivilege in the court below, she never requested the trial court order all

copies of the document returned to D.T. Accordingly, this issue has been waived. *See In re R.J.P.*, 391 S.W.3d at 678.

Even absent waiver, under rule 193.3(d), a party that inadvertently produces privileged material during the course of litigation must assert the applicable privilege within ten days of the production to have the material returned. TEX. R. CIV. P. 193.3(d). Nothing in *In re GMAC* or rule 193.3(d) suggests this Court has the authority to order the Bank to return a document that was knowingly presented to it years ago outside the course of this litigation. We deny appellant's request.

We affirm the trial court's judgment.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

Appendix D.

THE STATE OF TEXAS
Court of Appeals
Fifth District of Texas at Dallas
No. 05-19-00569-CV
JUDGMENT

TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T., Appellant
V.
FIRST FINANCIAL BANK, N.A., Appellee
On Appeal from the 380th Judicial District Court,
Collin County, Texas
Trial Court Cause No. 380-01566- 2016.
Opinion delivered by Justice Reichek.
Justices Whitehill andPedersen, III participating.

In accordance with this Court's opinion of this date, the judgment of the trialcourt is **AFFIRMED**. Appellant TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T.'s request for expunction is **DENIED**.

It is **ORDERED** that appellee FIRST FINANCIAL BANK, N.A. recover its costs of this appeal from appellant TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T.

Judgment entered October 28, 2020

Appendix E.

Order entered December 10, 2020

THE STATE OF TEXAS

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-19-00569-CV

TERESA WARD COOPER, AS NEXT FRIEND OF JANE DOE/D.T., Appellant

V.

FIRST FINANCIAL BANK, N.A., Appellee

On Appeal from the 380th Judicial District Court

Collin County, Texas

Trial Court Cause No. 380-01566-2016

ORDER

Before the Court En Banc

Before the Court is appellant's November 12, 2020 motion for en bancreconsideration.

Appellant's motion is **DENIED**.

/s/ ROBERT D. BURNS, III

CHIEF JUSTICE

Appendix F.

FILE COPY

RE: Case No. 21-0082 DATE: 4/23/2021
COA #: 05-19-00569-CV TC#: 380-01566-2016
STYLE: COOPER v. FIRST FIN. BANK

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MR. KENNETH M. STILLMAN
LAW OFFICE OF KENNETH M. STILLMAN
11300 N CENTRAL EXPY STE 408
DALLAS, TX 75243-6712
* DELIVERED VIA E-MAIL*

Appendix G.

FILE COPY

RE: Case No. 21-0082 DATE: 7/16/2021
COA #: 05-19-00569-CV TC#: 380-01566-2016
STYLE: COOPER v. FIRST FIN. BANK

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. KENNETH M. STILLMAN
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