

RENDERED: JULY 6, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000778-MR

CITY OF COLD SPRING; CONNIE
THOMER, DEBORAH VAUGHT,
KENNETH DALTON, AND
MILES VAUGHT

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE WARD, JUDGE
ACTION NO. 05-CI-01346

CITY OF ALEXANDRIA

APPELLEE

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, LAMBERT, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: The City of Cold Spring, Ken Dalton, Connie Thomer, and Miles and Deborah Vaught (hereinafter the “Joined Parties”), appeal the dismissal of their case for lack of standing. For the reasons stated herein, we affirm the holding of the Campbell Circuit Court.

Cold Spring originally filed a Petition for a Declaration of Rights against the City of Alexandria seeking a ruling on “the validity of Alexandria Ordinance No. 6-

89” and “[f]or a determination that the annexation of only right of way is unlawful and in violation of KRS 81A.410.” Alexandria filed a Motion to Dismiss. Prior to ruling on the Motion, the Circuit Court allowed Cold Spring to join Dalton, Thomer, and the Vaughts as party Petitioners to this action and to file an Amended Petition for Declarations of Rights. Alexandria subsequently filed a Motion to Dismiss the Joined Parties. The Circuit Court, finding standing necessary for a party to sustain a cause of action, dismissed Cold Spring and the Joined Parties for lack of standing. This appeal followed.

Standing is necessary for a party to sustain a cause of action. *Fourroux v. City of Shepardsville*, 148 S.W.3d 303, 306 (Ky. App. 2004). Additionally, in order for a challenger of an annexation ordinance to have standing to contest the validity of the annexation of property by a city, the challenger must fall under one of two categories: (1) a citizen or taxpayer of the city proposing to annex the territory that is personally and negatively affected by the annexation or (2) a resident voter or property owner of the area to be annexed. *King v. City of Corbin*, 535 S.W.2d 85, 86 (Ky. 1976). Persons or entities, including neighboring cities, that are not “a freeholder or resident of the territory proposed to be annexed” do not have “any right or standing to protest the annexation” of property by a city. *City of Eddyville v. City of Kuttawa*, 343 S.W.2d 404, 405 (Ky. 1961).

It is undisputed that neither Cold Spring nor the Joined Parties are citizens or taxpayers of Alexandria nor are they resident voters or property owners of the property annexed. They have failed to set forth any judicially recognizable interest in the subject

matter of this litigation that is neither remote nor speculative. Consequently, they do not have the requisite standing to challenge the Alexandria Annexation Ordinance.

Additionally, annexation is a “political act within the exclusive control of the legislature.” *Louisville Shopping Center, Inc. v. City of St. Matthews*, 635 S.W.2d 307, 310 (Ky. 1982). “The right to present defenses to annexation is a statutory privilege.” *Id.* Since the legislature has provided no statutory basis for either Cold Spring's or the Joined Parties' standing, we will not now undermine the clear intent of the legislature.

For the reasons set forth herein, we affirm the holding of the Campbell Circuit Court.

DIXON, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANTS:

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