NOT DESIGNATED FOR PUBLICATION

No. 125,568

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

PROTECT RURAL JOCO LLC, et al.,
Appellants,

v.

CITY OF EDGERTON, KANSAS,
Appellee.

MEMORANDUM OPINION

Appeal from Johnson District Court; JAMES F. VANO, judge. Opinion filed August 25, 2023. Affirmed.

Michelle W. Burns, of Burns Law, LLC, of Olathe, for appellants.

Todd A. Luckman and Lee Hendricks, of Stumbo Hanson, L.L.P., of Topeka, appellee.

Before COBLE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: Protect Rural JoCo LLC (Protect), Frank and Karen Bannister, Daniel and Kelly Morgan, and Shawn and Lora Winslow (Appellants) appeal the district court's dismissal of their petition challenging two annexation ordinances passed by the City of Edgerton (City). The individual appellants own properties around but not within the annexed area. They allege that the City violated K.S.A. 12-520(g), which precludes cities from annexing a narrow corridor of land to enhance future annexations of land. But the City successfully moved to dismiss Appellants' claim for lack of statutory standing. Finding no error, we affirm.

Factual and Procedural Background

In December 2020, the City of Edgerton (City) passed Ordinance 2057 to annex two tracts of land totaling around 47 acres (Property I) into the City's limits. The City passed Ordinance 2058 a week later, which authorized the annexation of another 600-acre parcel (Property II). The owners of all annexed properties consented to these annexations.

In May 2021, Appellants petitioned in the district court, challenging the City's annexations. Protect is an association of property owners and residents in Johnson County. According to their petition, the Bannisters live in Johnson County and own property within 1,000 feet of the annexed properties. The Morgans and Winslows also live in Johnson County and own properties adjacent to the annexed properties.

The petition alleged that the City had illegally annexed Property I by violating K.S.A. 12-520(g). This statute bars a city from annexing any "narrow corridor of land to gain access to noncontiguous tracts of land" and requires that such corridors "have a tangible value and purpose other than for enhancing future annexations of land by the city." K.S.A. 12-520(g). Appellants described the land annexed by Ordinances 2057 and 2058:

- "The configuration of a portion of [Property I] on the west side of Gardner Road is such that there exists a narrow corridor of land ('Corridor') to access non-continuous tracts of land, i.e., the remainder of [Property I] on the east side of Gardner Road as well as all of [Property II]."
- "The Corridor within [Property I] touching the west side of Gardner Road is a connector to that part of [Property I] on the east side of Gardner Road."

- "The Corridor has no tangible value of purpose other than to serve as a prohibited flag connector to that part of [Property I] east of Gardner Road as well as the future annexations of land by the City, to wit: [Property II]."

Appellants thus claimed that the City had passed Ordinance 2057 illegally, rendering its annexation of Property I void. They then alleged that Ordinance 2058 and the annexation of Property II depended on the validity of Ordinance 2057, so 2058 was also void. Appellants also alleged that before 2058 was passed, the owners of Property II applied to rezone that land from rural residential under agricultural uses to a logistics park under the industrial LP Logistics Park zoning designation. Appellants thus alleged that the City improperly annexed the properties to allow future rezoning and to expand the nearby Intermodal Logistics Park.

The City moved to dismiss Appellants' petition for lack of standing. It argued that only individuals expressly authorized to challenge a city's annexation had standing, that the annexation statute governing standing did not authorize any challenges to consent annexations, and that all owners of the annexed land had consented.

The district court held a hearing. Based on its review of K.S.A. 12-520 and K.S.A. 12-538 and relevant caselaw, the district court found Appellants had to show statutory standing, yet they failed to do so. The district court also suggested that only the State could challenge consent annexations under K.S.A. 12-520(a)(7). Because standing is jurisdictional, the district court concluded that it lacked subject matter jurisdiction and dismissed Appellants' petition. See *In re Care & Treatment of Emerson*, 306 Kan. 30, 34, 392 P.3d 82 (2017).

Appellants timely appeal.

Analysis

I. *Acquiescence*

We first address the City's argument that Appellants acquiesced to the district court's ruling. The City claims that after the district court dismissed their petition, Appellants contacted the Attorney General and asked the State to intervene or file a new petition to challenge the City's annexations, thus complying with the judgment.

The City attaches several documents to its appellate brief to support these allegations. But Kansas Supreme Court Rules require an appendix to consist "of limited extracts from the record on appeal." Supreme Court Rule 6.02(b) (2023 Kan. S. Ct. R. at 36). We note that the events documented in the City's appendix did not occur until after the district court ruled. Still, those documents cannot be added to the record on appeal. See Supreme Court Rule 3.02(d) (2023 Kan. S. Ct. R. at 21). Because these exhibits are not part of the record on appeal, we cannot consider them in deciding this issue. See *In re Marriage of Brotherton*, 30 Kan. App. 2d 1298, 1300, 59 P.3d 1025 (2002) (finding appendix to appellate brief is not substitute for the record on appeal).

The doctrine of acquiescence prevents a party from taking the inconsistent positions of challenging a judgment through an appeal and accepting the burdens or benefits of that judgment. Whether a party has acquiesced involves a question of this court's jurisdiction and is a question of law subject to unlimited review. *Uhlmann v. Richardson*, 48 Kan. App. 2d 1, 6, 13, 287 P.3d 287 (2012).

"'The gist of acquiescence sufficient to cut off a right to appeal is voluntary compliance with the judgment.'" *Varner v. Gulf Ins. Co.*, 254 Kan. 492, 494, 866 P.2d 1044 (1994) (quoting *Younger v. Mitchell*, 245 Kan. 204, Syl. ¶ 1, 777 P.2d 789 [1989]).

The record includes no action by Appellants that conveys their intent to waive this appeal. We thus find no acquiescence.

II. *Standing*

Standard of Review and Basic Legal Principles

We next address the Appellants' claim that the district court erred by finding they lacked standing to challenge the City's annexation. This issue presents a question of law over which our scope of review is unlimited. *Emerson*, 306 Kan. at 34.

"Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Board of Sumner County Comm'rs v. City of Mulvane*, 43 Kan. App. 2d 500, 506, 227 P.3d 997 (2010) (citing Black's Law Dictionary 1536 [9th ed. 2009]). Parties in a judicial action must have standing as part of the Kansas case-or-controversy requirement imposed by the judicial power clause of Article 3, section 1 of the Kansas Constitution. See *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 895-96, 179 P.3d 366 (2008).

As the party asserting standing, Appellants have the burden to prove it exists. See *Gannon v. State*, 298 Kan. 1107, 1123, 319 P.3d 1196 (2014). The nature of this burden "depends on the stage of the proceedings because the elements of standing are not merely pleading requirements. Each element must be proved in the same way as any other matter and with the degree of evidence required at the successive stages of the litigation." 298 Kan. at 1123 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 [1992]).

This case was dismissed at the pleading stage. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a

motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan*, 504 U.S. at 561.

Appellants assert that to challenge a K.S.A. 12-520(a)(7) consent annexation, such as this one, they need only meet traditional standing requirements, meaning they must show only that they "suffered a cognizable injury and that there is a causal connection between the injury and the challenged conduct." *Board of Sumner County Comm'rs v. Bremby*, 286 Kan. 745, 761, 189 P.3d 494 (2008). "To establish a cognizable injury, a party must establish a personal interest in a court's decision and that he or she personally suffers some actual or threatened injury as a result of the challenged conduct. [Citation omitted.]" *Sierra Club v. Moser*, 298 Kan. 22, 33, 310 P.3d 360 (2013).

Yet standing is sometimes controlled by statute. *Mulvane*, 43 Kan. App. 2d at 506-07. "When standing is controlled by a specific statute, courts must first determine whether the party meets the statutory standing requirements and, if so, then determine whether the party meets the traditional tests for standing. [Citation omitted.]" 43 Kan. App. 2d at 507. The City contends that standing is controlled by statute—K.S.A. 12-538—so Appellants need to meet both statutory and traditional standing requirements. It asks us to adopt the analysis of *Mulvane*, 43 Kan. App. 2d at 506-08. Under that analysis, parties lack standing to challenge a city's annexation unless their standing is expressly authorized by the annexation statute. The City contends that because K.S.A. 12-538 does not grant Appellants standing or authorize challenges to consent annexations (those under K.S.A. 12-520[a][7]), the district court correctly found that Appellants lack standing and it lacked subject matter jurisdiction.

The general rule of standing to challenge annexation

That this is an annexation case is relevant to standing. It has long been recognized in Kansas that an action challenging the validity of a city's annexation may be brought

only by the State, acting through one of its proper officers, such as a county or district attorney, or the attorney general. *Babcock v. City of Kansas City*, 197 Kan. 610, 611-13, 419 P.2d 882 (1966). This is because annexation is a reorganization of the city, so a suit challenging annexation challenges the city's corporate existence:

> "Throughout the history of the jurisprudence of this state, this court has never permitted a private individual to bring an action attacking the legality of the corporate existence of a city, where the plaintiff's right to bring the action was properly challenged. Likewise, it has been uniformly held that the extension of corporate limits to include new territory, under statutory authority, is, in effect, a reorganization of the city, and an action attacking the legality of such reorganization attacks the corporate integrity of the city in the same manner as if the city's original organization were attacked. Moreover, the legality of the organization or reorganization of a city cannot be questioned in a collateral proceeding or at the suit of a private individual but must be prosecuted by the state acting through its proper officers. [Citations omitted.]" 197 Kan. at 611.

The reason for prohibiting private litigators in this context was stated in *A. T. & S. F. Rld. Co. v. Wilson, Treas*., 33 Kan. 223, 228, 6 P. 281 (1885):

> "'It would be dangerous and wrong to permit the existence of municipalities to depend on the result of private litigation. Irregularities are common and unavoidable in the organization of such bodies; and both law and policy require that they shall not be disturbed except by some direct process authorized by law, and then only for very grave reasons.'"

After examining the history of this "rule of universal application," *Babcock* concluded:

> "In one form or another, commencing with *Craft v. Jackson* [*Co.*,] 5 Kan. 518, [521], *decided in* 1870, to *Schulenberg v. City of Reading*, [196 Kan. at 51], decided in 1966, the rule that a private individual cannot challenge municipal procedure and organization has been undeviatingly followed, unless the plaintiff's right to bring the action was not properly challenged." 197 Kan. at 612-13.

Babcock applied this rule, finding that a private individual could not challenge a city's annexation ordinances by filing a quo warranto-type action, even though the parties had stipulated that the individual had an interest adverse to the ordinances. 197 Kan. at 615-18. Under *Babcock*'s rule, an individual's traditional or common law standing is not enough in annexation cases.

No quo warranto action

Appellants mention quo warranto actions, but they cite no authority showing they have a right to initiate one. "An action in quo warranto demands that an individual or corporation show by what authority it has engaged in a challenged action." *Kelly v. Legislative Coordinating Council*, 311 Kan. 339, 344, 460 P.3d 832 (2020). "'[A] writ of quo warranto is not an order directing the defendant to perform or to cease performing a certain act; rather, it is an order directing the defendant to show by what authority he or she is acting.' 55 C.J.S., Mandamus § 5." *Schwab v. Klapper*, 315 Kan. 150, 155, 505 P.3d 345 (2022).

Mulvane shows Appellants have no right to bring a quo warranto action—although a quo warranto action may be the proper vehicle to challenge a city's annexation ordinance, the only "authorized driver" of that vehicle is the State.

> "[T]his issue was long ago resolved by our Supreme Court . . . . See *Babcock*, 197 Kan. at 615-18 (holding the language in K.S.A. 60-1203 [formerly K.S.A. 60-1403], providing that a quo warranto action brought '"by a person claiming . . . an interest adverse to . . . a[n] ordinance . . . shall be prosecuted"' in that person's name rather than the name of the State, did not enlarge a private individual's right to use quo warranto to challenge the lawfulness of a municipal organization's annexation ordinances); see also *Sabatini*, 214 Kan. at 413 (court noted its repeated holding that 'an action challenging the validity of a city annexation ordinance can be prosecuted only by the state acting through one of its proper officers, such as a county attorney, district attorney, or the attorney general').

> "Stated another way, while a quo warranto action may be the proper vehicle to challenge a city's annexation ordinances, the [petitioner must be] an authorized 'driver.' Rather, the authorized driver is the State, acting through a proper officer." *Mulvane*, 43 Kan. App. 2d at 509-10.

Appellants thus cannot rely on quo warranto to challenge the annexations.

As *Babcock* noted, the general rule is based on public policy and applies to all types of actions, including quo warranto actions, and regardless of the procedural stage of a case attacking the legality of a city's corporate existence:

> "As indicated by our numerous decisions, the foregoing rule of universal application has been examined and re-examined with great care and has always been reaffirmed; it is said to be founded upon public policy and has been consistently applied regardless of whether the procedure was a direct attack upon annexation such as here presented (*Smith v. City of Emporia*, supra; *State ex rel. Foster v. City of Kansas City*, 186 Kan. 190, 350 P.2d 37) or an indirect or collateral attack upon annexation such as in []*Topeka v. Dwyer*, supra. The rule has been held applicable to all types of actions attacking the legality of corporate existence of cities and districts regardless of whether the attacking procedure was injunction (*Chaves v.* []*Atchison*, supra), quo warranto (*State ex rel. Foster v. City of Kansas City*, supra), declaratory judgment (*Fairfax Drainage District v. City of Kansas City*, 190 Kan. 308, 374 P.2d 35), appeals from an order of the Board of County Commissioners (*Lampe v. City of Leawood*, 170 Kan. 251, 225 P.2d 73), habeas corpus (*In re Short, Petitioner*, 47 Kan. 250, 27 P. 1005), or criminal defense (*City of Topeka v. Dwyer*, supra)." 197 Kan. at 613.

Exception to the general rule

Appellants rely on an exception making the general rule inapplicable when the Legislature has expressly permitted someone else to sue.

> "Significantly, this general rule requiring State action applies to collateral attacks against the integrity of a municipal corporation, including challenges to a city's annexation ordinances, but the rule does not apply when the legislature has expressly authorized review. *City of Kansas City v. Board of County Commissioners*, 213 Kan. 777, 779-80, 518 P.2d 403 (1974)." *Mulvane*, 43 Kan. App. 2d at 508.

Thus, when the Legislature has expressly authorized review, actions challenging a city's annexation ordinance may be brought by an individual other than the State. 43 Kan. App. 2d at 508. And the Legislature has expressly authorized certain individuals to challenge annexations since 1974.

As an alternative to their traditional standing argument, Appellants invoke this exception, asserting that the Legislature has expressly authorized them to sue via K.S.A. 19-223. This statute states, "[a]ny person who shall be aggrieved by any decision of the board of commissioners may appeal from the decision of such board to the district court of the same county." This general standing statute, if viewed in isolation, would grant Appellants standing if they show they are aggrieved by the annexation. See *Fairfax Drainage District v. City of Kansas City*, 190 Kan. 308, 314-15, 374 P.2d 35 (1962) (defining "aggrieved").

But we cannot read any statute in isolation. We must read the relevant statutes together to see if they produce inconsistent results.

> "When statutes overlap and produce inconsistent results, we may turn to the canon of construction providing that a specific statute controls over a more general statute. *State v. Chavez,* 292 Kan. 464, 466, 254 P.3d 539 (2011); *Horn,* 288 Kan. at 692, 206 P.3d 526; *In re K.M.H.,* 285 Kan. 53, 82, 169 P.3d 1025 (2007). As this court recently explained:
>
> > "'It is a cardinal rule of law that statutes complete in themselves, relating to a specific thing, take precedence over general statutes or over other statutes which deal only incidentally with the same question, or which might be construed to relate to it. Where there is a conflict between a

> statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case. [Citations omitted.]'" *Cochran,* 291 Kan. at 907 (quoting *Chelsea Plaza Homes, Inc. v. Moore,* 226 Kan. 430, 432, 601 P.2d 1100 [1979])." *State v. Turner*, 293 Kan. 1085, 1088, 272 P.3d 19 (2012).

We thus examine the standing requirements under K.S.A. 12-538 for annexation suits. That statute, enacted in 2005—see L. 2005, ch. 155, § 3—grants limited parties standing to challenge "certain annexations":

> "Any owner of land annexed by a city under the authority of K.S.A. 12-520(a)(1) through (6), and amendments thereto, and any city whose nearest boundary line is located within 1/2 mile of the land being so annexed, within 30 days next following the publication of the ordinance annexing the land, may maintain an action in district court of the county in which the land is located challenging the authority of the city to annex the land, whether the annexation was reasonable, whether the service plan was adequate and the regularity of the proceeding had in connection with the annexation procedures."

K.S.A. 12-520(a) has seven subsections. The first six state how a city can annex land without the landowner's consent. The seventh permits annexation with the landowner's consent. Under subsection (a)(7), a city may annex land if "[t]he land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner." The parties agree that the land annexation here was done under K.S.A. 12-520(a)(7) by consent of all landowners. K.S.A. 12-538 thus grants standing to challenge annexations under K.S.A. 12-520(a)(1)-(6) to owners who did not consent to annexation of their land, and certain cities. But K.S.A. 12-538 omits any mention of K.S.A. 12-520(a)(7) and thus does not expressly grant standing to anyone to challenge consent annexations.

Appellants claim that by referencing only subsections (a)(1)-(6) of K.S.A. 12-520(a) and intentionally omitting consent annexations under K.S.A. 12-520(a)(7) from

K.S.A. 12-538, the Legislature allowed a broader range of individuals and cities to challenge consent annexations than those identified in K.S.A. 12-538. As support, Appellants contend that if K.S.A. 12-538 is the only rule controlling standing in annexation cases, violations of certain annexation rules, including K.S.A. 12-520(f) and (g), will go unchallenged. But Appellants cite no pertinent authority to support their interpretation of K.S.A. 12-538. See *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018) (Failure to support a point with pertinent authority or failure to show why a point is sound despite a lack of supporting authority or in the face of contrary authority is like failing to brief the issue.). And Appellants overlook that the State has independent authority to challenge the validity of annexation ordinances, including violations of K.S.A. 12-520(f) and (g), so violations of those and other annexation rules need not go unchallenged.

Appellants also fail to recognize contrary authority in *Mulvane*, 43 Kan. App. 2d at 510-12. Addressing the Board's challenge to a consent annexation, *Mulvane* found the Legislature did not provide standing under K.S.A. 12-538 for anyone to directly challenge a consent annexation under K.S.A. 12-520(a)(7):

> "[A]s the City points out, the legislature has specifically provided that when a city annexes land under K.S.A. 2009 Supp. 12-520(a)(1)-(6), any owner of the annexed land and 'any city whose nearest boundary line is located within 1/2 mile of the land' has standing to challenge the annexation in district court. K.S.A. 2009 Supp. 12-538. Notably, the legislature did not extend standing to counties to challenge a city's annexation under K.S.A. 2009 Supp. 12-520(a)(1)-(6). More importantly, the legislature did not provide standing under K.S.A. 2009 Supp. 12-538 for any party to directly challenge a city's annexation accomplished with the consent of the landowners under K.S.A. 2009 Supp. 12-520(a)(7), the statutory provision utilized by the City in this case." 43 Kan. App. 2d at 511.

We agree with *Mulvane*. The Legislature's omission of subsection (a)(7) from the list in K.S.A. 12-520(a)(1)-(6) of individuals who may challenge a city's annexation means consent annexations under K.S.A. 12-520(a)(7) cannot be challenged by individuals; it does not mean that consent annexations may be challenged by any aggrieved party. This court cannot selectively apply K.S.A. 12-538's statutory standing requirements. A municipality's power to alter its boundaries through annexation is "'vested absolutely and exclusively in the legislature, and this power is therefore completely controlled by statute.'" *Genesis Health Club, Inc. v. City of Wichita*, 285 Kan. 1021, 1033, 181 P.3d 549 (2008) (quoting *Crumbaker v. Hunt Midwest Mining, Inc.*, 275 Kan. 872, 884, 69 P.3d 601 [2003]). Thus we can "only conclude that the legislature did not intend to enlarge the right of standing beyond that granted by the express language of the amendment." *City of Lenexa v. City of Olathe*, 228 Kan. 773, 777, 620 P.2d 1153 (1980), *rev'd on other grounds* 229 Kan. 391, 625 P.2d 423 (1981). Because the Legislature has not expressly authorized review of consent annexations by those who live outside or inside the land annexed, actions challenging such annexations must be brought by the State.

The most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be determined. *Montgomery v. Saleh*, 311 Kan. 649, 654-55, 466 P.3d 902 (2020) (requiring appellate court to first consider the statute's plain language). The goal of the annexation statute is to "protect the rights of landowners against a city's *unilateral* action in annexing their land." *City of Leawood v. City of Overland Park*, 245 Kan. 283, 286, 777 P.2d 830 (1989) (citing *Banzer v. City of Wichita*, 237 Kan. 798, 801, 804-05, 703 P.2d 812 [1985]). Our court has therefore interpreted K.S.A. 12-538 as authorizing "landowners whose land is annexed pursuant to K.S.A. 2014 Supp. 12-520(a)(1)-(6) the power to bring an action in district court challenging the annexation. . . . [This] power to sue covers all K.S.A. 2014 Supp. 12-520(a) annexations except those accomplished through subsection (7)." *Board of Saline County Comm'rs v. City of Salina*, No. 117,126, 2018 WL 1545842, at *9-10 (Kan. App.

2018) (unpublished opinion). This makes sense, as landowners who consent to annexations under subsection (a)(7) have not had their land unilaterally annexed by a city, and having consented, they have no basis to sue. See *City of Lenexa v. City of Olathe*, 233 Kan. 159, 164, 660 P.2d 1368 (1983) (finding because all the land involved was land which the owners petitioned the city to annex, the general objective of protecting the rights of landowners against unilateral action by a city in annexing their land had been served).

K.S.A. 12-538 limits standing for persons challenging a city's annexation, while K.S.A. 19-223 grants standing to anyone aggrieved by any decision of the board of commissioners. The two statutes overlap and produce inconsistent results. K.S.A. 12-538 is more specific than K.S.A. 19-223. We thus apply the canon of construction providing that a specific statute controls over a more general statute. Because Appellants bring an annexation case, they are subject to the specific standing rules the Legislature has provided for such cases in K.S.A. 12-538. Under that statute, Appellants lack standing.

Traditional standing not sufficient

Because Appellants fail to persuade us that they have statutory standing, we need not address traditional standing, as both are required. We thus do not determine whether Appellants showed they were aggrieved by the City's annexation. We note, however, that their suit seeks to assert and preserve their individual interests in their own property. But as this court has explained in a different context, K.S.A. 12-538 "does not provide standing to assert individual property rights so much as standing to attack a municipality's authority for annexation." *Stueckemann v. City of Basehor*, No. 105,457, 2012 WL 3966521, at *4 (Kan. App. 2012) (unpublished opinion) (citing *Dillon Real Estate Co. v. City of Topeka*, 284 Kan. 662, Syl. ¶ 3, 163 P.3d 298 [2007]), *aff'd* 301 Kan. 718, 348 P.3d 526 (2015). So the premise of Appellants' alleged injury here, which may better align with a zoning case, does not align with the objective or nature of an annexation suit.

New issue in reply brief

Appellants raise a new issue in their reply brief, citing *Dillon*, 284 Kan. 662. Appellants argue they have standing to challenge the City's annexations because the annexations violate K.S.A. 12-520(g) and are thus void. This statute bars a city from annexing any "narrow corridor of land to gain access to noncontiguous tracts of land" and requires that such corridors "have a tangible value and purpose other than for enhancing future annexations of land by the city." K.S.A. 12-520(g).

But Appellants did not cite *Dillon* or similar cases that may be read to lessen the strict standing requirements in some annexation cases. See *Leawood*, 245 Kan. at 285; *Lenexa*, 228 Kan. 773. Nor did they raise this claim in their initial briefing. We thus dismiss this argument. See *State v. Keys*, 315 Kan. 690, 701, 510 P.3d 706 (2022) (applying Kansas Supreme Court Rule 6.05 [2021 Kan. S. Ct. R. 37] and dismissing new issue raised in appellant's reply brief).

Yet even if we were to reach this argument, Appellants would fare no better, as *Dillon* is distinguishable. *Dillon* was brought by the owner of the annexed land—the City had obtained consent from his predecessor in title. Appellants do not own any of the annexed land. And in *Dillon*, the State intervened. Not so here. And *Dillon* involved a consent annexation under K.S.A. 12-521, unlike the consent annexations here under K.S.A. 12-520. And even under K.S.A. 12-521, Appellants would lack standing, as that statute expressly rejects standing for individuals who live near but not in the annexed area:

> "Any owner of land annexed pursuant to this section or the city aggrieved by the decision of the board of county commissioners may appeal the decision of the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. *Nothing in this subsection shall be construed as granting the*

> *owner of land in areas near or adjacent to land annexed pursuant to this section the right to appeal the decision of the board of county commissioners*." (Emphasis added.) K.S.A. 2020 Supp. 12-521(f).

In conclusion, we find that the district court correctly dismissed Appellants' claim for lack of statutory standing.

Affirmed.