

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

MARY LOU WATSON, ET AL.,)	
)	
Appellants,)	
)	
v.)	Case No.: ED109793
)	
RAINTREE PLANTATION PROPERTY)	
OWNERS' ASSOCIATION, INC., ET AL.,)	
)	
Respondents.)	

**RAINTREE PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.'S
MOTION TO DISMISS FOR LACK OF STANDING**

COMES NOW Respondent, Raintree Plantation Property Owners' Association, Inc., ("RPOA") by and through the undersigned counsel, and respectfully move for dismissal of this Appeal. In support, Respondent states to the Court as follows:

A. When a Party Lacks Standing the Appeal Must be Dismissed.

Standing is a jurisdictional matter antecedent to the right to relief. *Healthcare Services of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 612 (Mo. banc 2006). When the appellant lacks standing, the court "must dismiss" the case because it does not have jurisdiction over the substantive issues being presented. *Id.* Only parties to a lawsuit or those who properly become parties may appeal a judgment. *Ring v. Metropolitan St. Louis Sewer District*, 41 S.W.3d 487, 491 (Mo. App. E.D. 2000).

In the matter now before this Court, Appellants lack standing to appeal in light of the fact that Appellants' only redress was to appeal the trial court's denial of a motion to intervene by designated objector, Susan Rauls ("Rauls"). Rather than appeal the denial of

intervention, Appellants seek direct appeal of the trial court's approval of a class settlement by proceeding under the name of a different objector, one who was not identified in Rauls' motion to intervene, Mary Lou Watson ("Watson").

B. Intervention is a Prerequisite for a Party to Have Standing to Appeal the Adequacy of a Class Action Settlement.

In *Ring*, unnamed class members had their appeal dismissed because they did not have standing to appeal the class action settlement. *Id.* at 491. There, unnamed class members attempted to intervene under 52.10(a) in class action. *Id.* at 490. They also filed timely objections to the proposed settlement. However, both the intervention and objections were denied by the trial court, causing the unnamed class members to appeal both decisions. *Id.* at 490. Although the Court held that they did have standing to appeal the denial of the intervention, they did not have standing to appeal the approval of the settlement agreement even though they made timely objections. *Id.* at 491. In requiring intervention as a prerequisite to appeal the settlement, this Court reasoned proper intervention ensures class action litigation is manageable and productive. *Id.* Additionally, the unnamed class members interests are adequately protected because they can immediately appeal the denial of their intervention. *Id.* Ultimately, this Court concluded that this ensures that unnamed class members are protected, and class actions will not become unmanageable and non-productive. *Id.*

However, in *Paulson v. Dynamic Pet Products, LLC.*, the Western District was presented with an unusually unique set of circumstances that resulted in them breaking precedent and allowing a group of unnamed objectors ("Objectors") standing to appeal.

560 S.W.3d 583, 590 (Mo. App. W.D. 2018). Objectors were the named plaintiffs in a nationwide consumer protection and fraud class action filed in United States District Court in the Southern District of California¹. *Id.* at 587. During the federal litigation, some enterprising Plaintiffs filed an additional class action in Missouri, alleging the same essential facts applied to the Missouri Merchandising Practices Act. *Id.* Although the *Paulson* plaintiffs beat Objectors to the punch, Objectors immediately became involved with and “fully participated in” the mediation of the Missouri class action. *Id.* While they participated said mediations and received the proposed settlement, Objectors’ counsel did not appear at the preliminary hearing to approve the settlement. *Id.* After approval, Objectors filed a motion to intervene and objections to the class action, both of which were denied. *Id.* at 588. However, in breaking for precedent under these unusual circumstances, the Western District determined the Objectors had standing from to appeal the settlement agreement from their objections in a case which Objectors had “fully” participated” in. *Id.* at 590. However, the Court still recognized the general rule that only parties to a lawsuit may appeal an adverse judgment. *Id.*

C. The Case at Hand is Analogous to *Ring*’s Procedural Posture and Concerns and Bears No Resemblance to the Unique Circumstances of *Paulson*.

This Court’s concerns in *Ring*, that a lack of intervention will cause class actions to become unmanageable and unproductive are present. First Appellants actions are the same as those taken by the unnamed parties in *Ring*. The interests Appellants purport represent are identical to the interests asserted by Rauls when she filed her motion to

¹ *Reed v. Dynamic Pet Products*, No. 15cv0987-WQH-DHB, 2016 WL 3996715 (S.D. Cal. 2016).

intervene under 52.10(a). Like the unnamed parties in *Ring*, Rauls also sought intervention under 52.10(a) where she claimed that her interests as a subdivision member who is not paying dues (“Non-Paying Member”) are not adequately represented by the named class member who does pay dues. (L.F. Doc. No. 62;63). Her intervention was denied on April 26, 2020, when the trial court determined that Rauls was seeking the same relief as the named class representative and that her intervention was untimely and prejudicial. (L.F. Doc No. 80). This denial was never the source of an appeal as envisioned by *Ring*.

Waiting for final settlement, rather than appealing Rauls’ denial, Appellants, represented in name by Watson, purport to represent the interests of subdivision members who are not paying dues (“Non-Paying Members”) which is the same purported interest asserted by Rauls. *See generally* Appellants’ Brief; (L.F. Doc. No. 62;63). The fact that Rauls and Watson are both Non-Paying Members asserting the same interests means that the only difference between the two is name and name only as one Non-Paying Member simply swapped for another. This is like *Ring*, where the unnamed class members were denied intervention, and then lacked standing to appeal the adequacy of the settlement. The change of name from Rauls to Watson, does not change the fact that Non-Paying Members were denied intervention in this lawsuit. Under *Ring*, the Non-Paying Members, whether titled as Watson or Rauls, only have standing to challenge the denial of their intervention. Appellants failed to do this. Consequently, *Ring* applies, and this appeal should be dismissed.

Giving further credence to the fact that Watson was simply substituted for Rauls is the fact that, Susan Rauls is specifically designated as an objector. Rauls is one of the purported designated objectors pursuant to the preprinted form she submitted to the trial court. (L.F. Doc No. 92). Rauls submitted her objections together with all the other designated objectors – rather than appeal the denial of her intervention. *Id.* That Susan Rauls is an official member of “designated objectors” as well as Appellants et al. demonstrates further that designating Watson, rather than Rauls, as the named Appellant was just a cynical name change ploy to flout the requirements of this Court as laid out in *Ring*.

Additionally, *Paulson*’s unique factual circumstances and the holding extended therefrom are not applicable here because those considerations are not present. Unlike *Paulson*, where Objectors were named parties to a concurrent class action and “fully participated” in the Missouri class action, Appellants have no such involvement. It made sense to break precedent and allow Objectors standing in *Paulson* because of the major involvement Objectors had in the case. This level of involvement supported standing there, while here, Appellants utter lack of involvement does not give them standing. Appellants’ purported interests were not raised until the Rauls’ Intervention, nearly five years after litigation started and on the eleventh hour before settlement. (L.F. Doc No. 62;63). Consequently, the degree of involvement supporting standing in *Paulson* is absent in this case.

Finally, because *Ring*’s has continued to be relied upon and expanded by this Court it should continue to do so. In *State ex rel. Koster v. Conocophillips Company*, this

Court expanded the *Ring* intervention prerequisite to find that unnamed parties do not have standing to appeal final judgments in class actions in addition to settlement agreements. No. 102505, 2015 WL 6688212, at *1, *3 (Mo. App. E.D. 2015). Next, in *City of O'Fallon v. CenturyLink, Inc.*, this Court cited *Ring* to conclude that unnamed class members require intervention to appeal an award of attorney's fees as well. 491 S.W.3d 276, 285 (Mo. App. E.D. 2016). This Court should continue to rely on the sound reasoning of *Ring* to ensure that class actions do not become an unmanageable and non-productive mess.

Appellants should not be rewarded for its attempts to circumvent the *Ring* intervention requirement using the thinly veiled name change Rauls and Watson. Such conduct is precisely the actions that the *Ring* Court prophesized as making class action litigation unmanageable and non-productive particularly because Appellants waited five years to assert this interest and only at the last minute. Under *Ring*, Appellants' recourse was not a name swap and appeal after settlement approval. Rather, their only recourse was an appeal of the denial to intervene, recourse that they chose not to take.

CONCLUSION

Because there was no appeal following the denial of Rauls' motion to intervene on behalf of the Non-Paying Members, these Non-Paying Members, Watson included, lack standing to bring an appeal for any of Appellants' Points I - IV. This jurisdictional defect precludes the Court from ruling on this appeal and it therefore must be dismissed.

Healthcare Services of the Ozarks, 198 S.W.3d at 612.

WHEREFORE Respondent respectfully requests this Court Dismiss Appellants' Appeal, for the recovery of its costs in this matter, including reasonable attorney's fees and for any such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was sent via the Court's electronic filing system on February 28, 2022 to all counsel of record in this matter.

/s/Ted D. Disabato