

Denied and Opinion Filed October 10, 2016



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01172-CV

IN RE: SCHINDLER ELEVATOR CORPORATION, Relator

Original Proceeding from the 417th Judicial District Court
Collin County, Texas
Trial Court Cause No. 417-00622-2013

MEMORANDUM OPINION

Before Justices Francis, Fillmore, and Stoddart
Opinion by Justice Francis

Before the Court is relator's October 4, 2016 petition for writ of mandamus in which relator complains the trial court refused to issue findings of fact and conclusions of law explaining the court's reasoning for denying relator's motion for leave to designate responsible third parties.

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Based on the record before us, we conclude relator has not shown it is entitled to the relief requested. *See* TEX. R. APP. P. 52.8(a); *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (orig. proceeding). A trial court is required to file findings of fact and conclusions of law when properly requested under rule 296 only after the

signing of a judgment in a case that has been “tried” before the trial court. *See* TEX. R. CIV. P. 296. Relator did not file a written request for findings of fact and conclusions of law as required by Rule 296; however, the hearing on relator’s motion for leave to designate responsible third parties was not a trial on the merits, and the order denying relator’s motion did not resolve an issue that has been “tried” for purposes of Rule 296. This record reveals no abuse of discretion. Moreover, relator has an adequate remedy by appeal because it can raise an issue on direct appeal regarding the trial court’s failure to make findings and conclusions. *See, e.g., In re Morgan*, 08-16-00126-CV, 2016 WL 4013777, at *1 (Tex. App.—El Paso July 27, 2016, orig. proceeding). Accordingly, we **DENY** relator’s petition for writ of mandamus.

/Molly Francis/

MOLLY FRANCIS
JUSTICE

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