

CONDITIONAL GRANT and Opinion Filed August 5, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-00693-CV

IN RE STONEGATE CONTRACTORS LLC, Relator

**Original Proceeding from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-23-07905-B**

MEMORANDUM OPINION

Before Justices Smith, Lewis, and Barbare

Opinion by Justice Smith

In this original proceeding, relator Stonegate Contractors LLC seeks mandamus relief from a May 21, 2025 order in which respondent, the Honorable Melissa Bellan, presiding judge of the Dallas County Court at Law No. 2, denied Stonegate's motion for leave to designate Pencil Point Construction, LLC as a responsible third party in the underlying lawsuit. Stonegate contends the trial judge abused her discretion by denying its motion for leave because (1) Stonegate's disclosure of the responsible third party was timely under section 33.004 of the Texas Civil Practice and Remedies Code, as the expiration of the statute of limitations was immaterial in this case; and (2) Stonegate pleaded sufficient facts in

its motion for leave to put real parties Terry and Shawna Johannsen on notice. Because we agree the trial judge abused her discretion and Stonegate does not have an adequate appellate remedy, we conditionally grant Stonegate's petition for writ of mandamus.

Procedural Facts and Background

Terry Johannsen worked as a superintendent for Pencil Point when he was injured on December 2, 2021, at a residential construction site after stepping on an improperly fastened truss joist that collapsed and caused him to fall twelve to fourteen feet onto the concrete below. On November 30, 2023, he and his wife filed a negligence suit against Stonegate, who was a subcontractor hired to perform framing work; against Antonio Torres, a subcontractor hired by Stonegate to install floor joists and decking; and against two other individuals associated with Stonegate, who have since been nonsuited. The Johannsens alleged that the truss joint was installed by defendants, who failed to properly fasten the truss joint causing it to collapse when Terry placed his weight on it.

Stonegate answered, generally denying the claims. In its initial disclosures, Stonegate did not identify any potential party or any person who may be designated as a responsible third party. In its first amended disclosures, served on April 25, 2024, Stonegate identified Pencil Point as a potential party to the suit but responded it was "unaware of any responsible third parties at this time." Subsequently, Stonegate's expert opined that Pencil Point was responsible in whole or in part for

Terry's injuries. Thus, Stonegate amended its disclosures on February 13, 2025, to reflect this information and identified Pencil Point as a potential responsible third party. The next day, on February 14, 2025, Stonegate filed a motion for leave to designate Pencil Point. On February 21, 2025, the Johannsens objected to Pencil Point's being designated as a responsible third party on the grounds that the designation was made outside the statute of limitations, which expired December 2, 2023, two days after the Johannsens filed suit, and that insufficient facts were pleaded by Stonegate to satisfy the requirements of section 33.004.

After a hearing,¹ the trial judge issued a written order denying Stonegate's motion without explanation. This original proceeding followed on June 9, 2025. Because trial was set for June 24, 2025, this Court granted Stonegate's emergency motion to stay the trial and requested a response, which this Court received from the Johannsens.

Mandamus Relief – Responsible Third Parties

To obtain mandamus relief, relator must show that the trial judge clearly abused her discretion and that relator has no adequate remedy by appeal. *In re YRC, Inc.*, 646 S.W.3d 805, 808 (Tex. 2022) (orig. proceeding) (per curiam). There is no adequate remedy by appeal when a responsible-third-party designation is

¹ The hearing transcript is not included within the mandamus record; however, Stonegate represents that no testimony was presented with respect to the motion. *See* TEX. R. APP. P. 52.7(a)(2). To the extent Stonegate references remarks made at the hearing in its mandamus petition, we conclude its reference to such remarks is not material to the disposition of this original proceeding. Accordingly, we conclude the record before this Court is sufficient for mandamus review.

erroneously denied because “[a]llowing a case to proceed to trial despite erroneous denial of a responsible-third-party designation would skew the proceedings, potentially affect the outcome of the litigation, and compromise the presentation of the relator’s defense in ways unlikely to be apparent in the appellate record.” *In re Coppola*, 535 S.W.3d 506, 509 (Tex. 2017) (orig. proceeding) (per curiam) (internal quotations and alterations omitted); *see also In re Connelly*, No. 05-24-01127-CV, 2025 WL 699752, at *2 (Tex. App.—Dallas Mar. 4, 2025, orig. proceeding) (mem. op.) (explaining any exception to the rule that no adequate appellate remedy ordinarily exists “should be a high bar to meet because ‘[a]llowing a case to proceed to trial without the third party would defeat the defendant’s right to have the jury determine the proportionate responsibility of all potential responsible parties, requiring a second trial’”) (alteration in original) (quoting *In re YRC*, 646 S.W.3d at 810). “The denial of mandamus review impairs—and potentially denies—a litigant’s significant and substantive right to allow the fact finder to determine the proportionate responsibility of all responsible parties.” *In re Coppola*, 535 S.W.3d at 509. Thus, “ordinarily, a relator need only establish a trial court’s abuse of discretion to demonstrate entitlement to mandamus relief with regard to a trial court’s denial of a timely-filed section 33.004(a) motion” to designate responsible third parties. *Id.* at 510.

A responsible third party is “any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought,

whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.” TEX. CIV. PRAC. & REM. CODE § 33.011(6). The motion to designate a responsible third party “must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.” *Id.* § 33.004(a). Here, Stonegate filed its motion for leave on February 13, 2025, well before sixty days prior to the June 24 trial setting.

As to the expiration of the statute of limitations, Stonegate argues that there was never a day within limitations when it could have designated Pencil Point as a potential responsible third party because the statute of limitations ran before Stonegate knew about the lawsuit. The Johannsens respond that Stonegate acted with “extreme delay” in attempting to designate Pencil Point as a responsible third party because the designation occurred 381 days after Stonegate’s initial disclosure. Although Stonegate filed its motion to designate the day after it received its expert report, the Johannsens contend, “It defies common sense for Stonegate to claim that it had no indication that Pencil Point – the general contractor on the job at which Mr. Johannsen was injured – could potentially share some responsibility for the Johannsen’s damages.” The Johannsens further assert Stonegate at least knew of Pencil Point’s potential status as a responsible third party no later than April 25, 2024, the date on which Stonegate served its first amended disclosures identifying Pencil Point as a potential party. It was not until almost a year later that Stonegate

filed its motion to designate. Then it waited over two months to set a hearing, which was set just over a month before trial. Thus, according to the Johannsens, Stonegate failed to make a timely disclosure under the rules.

Section 33.004(d) provides:

A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

Id. § 33.004(d). In *In re Mobile Mini, Inc.*, the Supreme Court of Texas held that section 33.004 did not deprive Mobile Mini of its statutory right to designate a potential responsible third party where its discovery responses were due after limitations ran on the plaintiff's claims. 596 S.W.3d 781, 784–87 (Tex. 2020) (orig. proceeding) (per curiam). The Court explained:

Because a timely disclosure in accordance with the Texas Rules of Civil Procedure is all that is required of the defendant under the statute, requiring an earlier disclosure in suits filed mere days before the expiration of the statute of limitations is repugnant to the statutory language, unfairly burdens defendants, and skews the legislatively determined balance of interests.

Id. at 786–87. The Court further explained Mobile Mini's failure to disclose the potential responsible third party before limitations expired was not the result of "the gamesmanship concerns section 33.004(d) operates to prevent." *Id.* at 785. Instead, Mobile Mini's failure "to disclose [the third party's] identity before limitations

expired was the natural consequence of [the plaintiff's] decision to wait to file suit until limitations were nearing terminus.” *Id.*

The same is true here; the Johannsens waited to file suit until two days before the statute of limitations expired and Stonegate was not served with the suit until after the statute of limitations had run.² *See, e.g., In re Dakota Directional Drilling, Inc.*, 549 S.W.3d 288, 291–92 (Tex. App.—Fort Worth 2018, orig. proceeding) (conditionally granting mandamus relief where plaintiffs filed suit three days before limitations expired and concluding relators timely disclosed the potential responsible third party even when they filed their disclosures late, as plaintiffs were not unfairly surprised and the disclosure was made far in advance of trial); *In re Bustamante*, 510 S.W.3d 732, 734, 736–37 (Tex. App.—San Antonio 2016, orig. proceeding) (conditionally granting mandamus relief where plaintiffs filed suit one day before the statute of limitations expired and relator did not respond to disclosure requests from plaintiffs but, instead, the responsible-third-party information was disclosed in a deposition and in other disclosures and plaintiffs knew the employer and the other driver were responsible third parties). Additionally, according to the record, the discovery period was open until May 23, 2025, and thus, Stonegate filed its February 13, 2025 amended disclosures within the discovery period. Stonegate was also

² There is also a possibility there is no applicable limitations period with respect to Pencil Point. In *In re YRC*, the Supreme Court explained that when an employee is seeking to recover for a work-related injury and its employer is a subscriber to workers' compensation insurance, the employee's exclusive remedy against the employer for his injury is the recovery of workers' compensation benefits, which has no applicable limitations period in terms of filing suit. 646 S.W.3d at 808.

required to designate its experts and produce written reports by February 12, 2025, which it did. Furthermore, under section 33.004, the disclosure and motion to designate were filed well before the sixtieth day prior to trial. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(a).

The Johannsens further argue that a defendant cannot wait to disclose a responsible third party or rely on incomplete or vague disclosures to meet its discovery obligations and cite *In re Dawson*, 550 S.W.3d 625 (Tex. 2018) (original proceeding) (per curiam), for support. But in *In re Dawson*, the limitations period did not run until nearly three months after defendant's initial discovery requests were due. 550 S.W.3d at 627. Thus, the defendant could have disclosed the responsible third party before the statute of limitations ran. *Id.* Such is not the case here.

We are unpersuaded by the Johannsens' argument that Stonegate should have moved to designate Pencil Point by at least April 25, 2024. Section 33.004 requires a defendant to plead sufficient facts showing the alleged responsibility of the third party. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(g); *In re YRC*, 646 S.W.3d at 809 (explaining movant must meet fair-notice pleading requirement of TEX. R. CIV. P. 47(a)). Although Stonegate could speculate that Pencil Point might be at least responsible in part for Terry's injuries, it may not have been until Stonegate received its expert report that it realized the extent of Pencil Point's potential responsibility based on the expert's opinion regarding Pencil Point's actions and inactions and what is required on a construction site under OSHA. Rule 193.5 simply requires a

defendant to supplement incomplete or incorrect responses “reasonably promptly after the party discovers the necessity for such a response.” TEX. R. CIV. P. 193.5(b). The record demonstrates Stonegate immediately amended its disclosures after receiving its expert report.

Furthermore, “a defendant’s discovery conduct occurring *solely* after the expiration of the plaintiffs’ limitations period against the responsible third party is immaterial to the issue of timely disclosure for purposes of Section 33.004(d).” *In re Modern Senior Living LLC*, No. 05-22-00283-CV, 2022 WL 2187396, at *5 (Tex. App.—Dallas June 17, 2022, orig. proceeding) (mem. op.) (quoting *In re Bertrand*, 602 S.W.3d 691, 706 (Tex. App.—Fort Worth 2020, orig. proceeding)). This is because the requirement to disclose before limitations expires provides a procedural safeguard that prevents a defendant from belatedly pointing its finger at a time-barred responsible third party that the plaintiff can no longer add to the suit or recover against. *See In re Dawson*, 550 S.W.3d at 629; *In re Bertrand*, 602 S.W.3d at 706. But when the plaintiff files suit without leaving any time to add potential parties due to the imminent expiration of the limitations period, a procedural safeguard is no longer necessary. *See In re Dawson*, 550 S.W.3d at 629; *In re Bertrand*, 602 S.W.3d at 706. “Plaintiffs who wait until days before limitations expire to file suit do so at their peril.” *In re Mobile Mini*, 596 S.W.3d at 785.

Accordingly, to the extent the trial judge denied Stonegate’s motion for leave based on the expiration of the statute of limitations or any delay by Stonegate in amending its disclosures, the trial judge abused her discretion.

We next turn to whether the Johannsens established that Stonegate failed to plead sufficient facts to designate a responsible third party. Section 33.004(g) of the Texas Civil Practice and Remedies Code provides:

If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

TEX. CIV. PRAC. & REM. CODE § 33.004(g). Rule 47(a) of the Texas Rules of Civil Procedure requires that pleadings setting forth a claim for relief must contain “a short statement of the cause of action sufficient to give fair notice of the claim involved.”

TEX. R. CIV. P. 47(a). “To plead sufficient facts on a motion for leave to designate a responsible third party under Section 3[3].004, a movant must satisfy only this fair-notice requirement.” *In re YRC*, 646 S.W.3d at 809. Thus, as “long as a party can ascertain from the pleading the nature, basic issues, and type of evidence that might be relevant to the controversy, a pleading satisfies the Rule 47(a) standard.” *Id.* 809–

10. These pleading requirements are not stringent. *In re Greyhound Lines, Inc.*, No. 05-13-01646-CV, 2014 WL 1022329, at *2 (Tex. App.—Dallas Feb. 21, 2014, orig. proceeding) (mem. op.).

In the trial court, the Johannsens objected to Stonegate’s answer, arguing it failed “to allege any actions or inactions that were taken by the proposed responsible third-parties which caused Plaintiff’s damages.”³ But Stonegate’s answer is not the operative document at issue. Nowhere in section 33.004 does it require a defendant to incorporate its responsible-third-party allegations into its answer. Instead, section 33.004 speaks in terms of a separate motion. TEX. CIV. PRAC. & REM. CODE § 33.004(a), (f), (g), (h).

In its motion for leave, Stonegate alleged Pencil Point was Terry’s employer, directed Terry on his day-to-day duties, failed to supervise Terry, and failed to adequately train Terry. Furthermore, Stonegate attached its expert report to its motion in which its expert opined that Pencil Point failed to follow OSHA standards to establish one of three accepted conventional fall-protection methods, failed to have a competent person conduct inspections of the workplace to identify and correct hazards, and failed to prohibit Terry from accessing that particular work area until an assessment of the floor joists’ strength and structural integrity was completed. Stonegate’s expert also faulted Pencil Point for failing to report the injury to OSHA

³ The Johannsens do not address Stonegate’s sufficiency ground in their response to the petition for writ of mandamus.

as required and, thus, OSHA did not conduct an inspection of the project. According to Stonegate's expert's review of the record, including co-defendant Torres's deposition testimony, Pencil Point knew several floor joists had been left uninstalled due to a problem with the steel erection, Pencil Point advised them to leave the joists out to prevent a fire, and Terry was aware of the delay in installing the joists, including the joist he stepped on while attempting to take a photograph. These allegations put the Johannsens on notice of the nature and basic issues of the third-party's responsibility and the type of evidence that might be relevant, thereby satisfying the pleading requirements.

We conclude the trial judge abused her discretion in denying Stonegate's motion for leave based on the Johannsens' objection that Stonegate failed to plead sufficient facts. Moreover, even if the trial judge concluded Stonegate failed to plead sufficient facts, the trial judge abused her discretion by not granting Stonegate an opportunity to replead. *See id.* § 33.004(g)(2); *In re YRC*, 646 S.W.3d at 810.

As to whether Stonegate has an adequate appellate remedy, we conclude it does not. *See In re Coppola*, 535 S.W.3d at 509. The Johannsens do not argue that an exception applies to the rule that ordinarily a relator does not have an adequate remedy by appeal when a trial judge erroneously denies its motion for leave to designate a responsible third party, and we do not perceive of any such exception here. *See In re Connelly*, 2025 WL 699752, at *2.

Conclusion

Having concluded the trial judge abused her discretion in denying Stonegate's motion for leave to designate Pencil Point as a responsible third party and that Stonegate has no adequate remedy by appeal for the erroneous denial, we conditionally grant Stonegate's petition for writ of mandamus. We order the trial judge to vacate her May 21, 2025 order denying Stonegate's motion and issue an order granting Stonegate's motion designating Pencil Point as a responsible third party. The trial judge must file with this Court, within twenty days of this Court's opinion and order, a certified copy of her orders issued in compliance with this Court's opinion and order. The writ will issue only if the trial judge fails to comply. We further lift our June 11, 2025 stay of the trial court's June 24, 2025 trial setting.

/Craig Smith/
CRAIG SMITH
JUSTICE