NUMBER 13-20-00210-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE MCALLEN HOSPITALS, L.P. D/B/A MCALLEN MEDICAL CENTER, SOUTH TEXAS HEALTH SYSTEM, and MCALLEN MEDICAL CENTER, INC.

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes[1]

By petition for writ of mandamus, relators McAllen Hospitals, L.P. d/b/a McAllen Medical Center, South Texas Health System, and McAllen Medical Center, Inc., seek to compel the trial court to rule on (1) relators' motion to dismiss the healthcare liability claim filed against them under the Texas Medical Liability Act (TMLA), and (2) relators' motion

[1] *See* TEX. R. APP. P. 52.8(d) ("When granting relief, the court must hand down an opinion as in any other case," but when "denying relief, the court may hand down an opinion but is not required to do so."); *see also id.* R. 47.4 (distinguishing opinions and memorandum opinions).

for summary judgment.[2] Both motions have been pending since June 7, 2019. We conditionally grant the relators' petition for writ of mandamus.

I. BACKGROUND

On December 14, 2018, real parties in interest and plaintiffs below, Juana Laguna and Joanna Gonzalez Acevedo, as administrator of the estate of Regino Gonzalez Jr., filed their second amended original petition, which is the live pleading at issue, against Ray R. Fulp III, DO; Ray Fulp Orthopedics, PA; Robert C. Fountila, DO; McAllen Hospitals, LP; McAllen Medical Center; South Texas Health System; and McAllen Medical Center, Inc. According to this petition, Regino suffered a spontaneous fracture of his left femur while engaged in routine movement. The plaintiffs alleged that the defendants failed to properly screen, evaluate, and treat Regino because they treated the fracture by surgically inserting a rod, but failed to diagnose the injury as a pathological fracture caused by osteosarcoma, an aggressive malignant bone tumor. The plaintiffs also contended that the defendants' failure to diagnose the osteosarcoma and the placement of the rod resulted in the cancer spreading into Regino's leg, the ultimate amputation of the limb, remote metastases of the cancer, and ultimately, Regino's death. On February 4, 2019, relators filed their original answer to the lawsuit.

On June 7, 2019, relators filed a traditional motion for summary judgment contending that the plaintiffs' claims against them were barred by the statute of limitations. *See* TEX. R. CIV. P. 166a. According to the relators' motion, the plaintiffs' original petition was filed in this case on March 5, 2013, and the first amended petition was filed on September 24, 2013. The original petition was filed by Juana Laguna, individually and as

[2] This original proceeding arises from trial court cause number C-0973-13-A in the 92nd District Court of Hidalgo County, Texas, and the respondent is the Honorable Luis Singleterry. *See id*. R. 52.2.

next friend of Regino Gonzalez Jr., a minor child, and Regino Gonzalez Sr., against Ray R. Fulp, III, DO; Ray Fulp Orthopedics, PA; Marla T. Camacho, MD; Francisco Torres, MD; Robert C. Fountila, DO; Radiology & Imaging of South Texas, LLP; and McAllen Hospitals, LP d/b/a McAllen Medical Center. The first amended petition omitted Regino Gonzalez Sr. as a plaintiff and named Regino Gonzalez Jr. as a party because he had reached the age of majority at that time. Relators alleged that the "plaintiffs dismissed the hospital from the case by not naming the hospital as a Defendant in the Introduction, the list of Defendants or the allegations." The relators asserted that the plaintiffs filed their second amended petition on December 14, 2018, after Regino's death, and "named the hospital again as a Defendant after having dismissed the hospital in the first amended petition over five years earlier." Relators thus argued that the plaintiffs' claims were barred by the statute of limitations under § 74.251 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.251 (providing the statute of limitations for health care liability claims*); CHRISTUS Health Gulf Coast v. Carswell*, 505 S.W.3d 528, 537–38 (Tex. 2016).

On June 7, 2019, relators also filed a motion to dismiss the case against them pursuant to § 74.351(b) of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b) (requiring a plaintiff alleging a health care liability claim to file an expert report upon each defendant within a specified time after the defendant's answer is filed); *Ogletree v. Matthews*, 262 S.W.3d 316, 319 (Tex. 2007). The motion to dismiss recounted the history of the plaintiffs' amended pleadings as stated in relators' motion for summary judgment and alleged that plaintiffs "never served an

expert report on the hospital at any time." The relators thus argued that dismissal of the case was mandatory.

On June 10, 2019, the trial court signed orders setting the relators' motion for summary judgment and motion to dismiss for hearing on July 31, 2019.

On July 23, 2019, the plaintiffs filed a response to relators' motion for summary judgment. They asserted that their claims were not barred by the statute of limitations because, in 2013, they had sued McAllen Hospitals, LP d/b/a McAllen Medical Center for general negligence and subsequently nonsuited those claims. The plaintiffs asserted that the claims that they were raising against those defendants in 2018 were "wholly different" from the general negligence claims raised in 2013 because the new claims were based on the tort of "malicious credentialing," which they did not discover and reasonably could not have discovered until August 29, 2018, or August 30, 2018. The plaintiffs further asserted that they had never previously sued South Texas Health Systems and McAllen Medical Center, Inc.

On July 26, 2019, the plaintiffs filed a response to relators' motion to dismiss. The plaintiffs alleged that the relators' motion to dismiss was factually incorrect because the plaintiffs had served ten expert reports, collectively, in a timely fashion on May 31, 2019 and June 3, 2019.

On July 31, 2019, the trial court held a hearing on relators' motion to dismiss and motion for summary judgment as scheduled; however, the trial court did not issue a ruling on either motion at that time.

On December 3, 2019, relators filed a motion asking the trial court to hold a status conference on the case. The relators' motion stated that the trial court had taken their

motion for summary judgment and motion to dismiss "under advisement" on July 31, 2019, and the relators requested the trial court to set a status hearing and rule on these pending motions.

On December 4, 2019, the trial court ordered the parties to mediate the case before the end of the month and the trial court further set the case for a status hearing to be held on January 15, 2020.

On December 18, 2019, the plaintiffs filed a motion to compel discovery against relators. In response, on January 2, 2020, relators filed a motion for protective order and motion to stay all discovery. Relators alleged that all discovery was stayed under § 74.351(s) of the civil practice and remedies code "until final judicial determination that Plaintiffs have complied with the requirements of Chapter 74." *See* TEX. CIV. PRAC. & REM. CODE ANN.§ 74.351(s) (imposing a stay on "all discovery," with limited, specified exceptions, until an expert report has been filed). Relators alleged that the plaintiffs' expert report failed to meet the TMLA's statutory requirements; thus, relators had not been served with a report under the TMLA. Relators thus asserted that discovery was stayed until the trial court ruled on their motion to dismiss based on the sufficiency and timeliness of the plaintiffs' expert report.

On January 6, 2020, the trial court signed an order setting relators' motion for protective order and motion to stay for hearing on January 15, 2020. The status hearing was held on January 15, 2020; however, the trial court did not issue a ruling on either the motion to dismiss or the motion for summary judgment.

On February 5, 2020, relators filed a second motion requesting the trial court to hold a status conference. The motion stated that the trial court had held the first status

conference, as requested, on January 15, 2020 and the relators had thereafter filed proposed orders on their motion to dismiss and motion for summary judgment. Relators asserted that they had requested the trial court to rule on these pending motions at the January 15, 2020 status hearing.

On February 5, 2020, the trial court signed an order setting the relators' second motion for status conference to be heard on March 11, 2020.

On March 10, 2020, the plaintiffs filed a summary of the pending motions in preparation for the upcoming status conference. The plaintiffs' summary includes the relators' motion for summary judgment and motion to dismiss, the pleadings relevant to the discovery dispute between relators and plaintiffs, and additional motions filed by other defendants. That same day, relators also filed a list of the pleadings, motions, responses, and objections pertaining to the matters that would be under consideration at the upcoming hearing.

On March 11, 2020, the status hearing proceeded in chambers. The trial court advised the parties that he would make rulings on the pending motions.

After the trial court failed to issue orders on relators' motion to dismiss or motion for summary judgment, relators filed this original proceeding on April 16, 2020. They present three issues through which they assert: (1) the trial court abused its discretion by refusing to rule on their motion to dismiss; (2) the trial court abused its discretion by refusing to rule on their motion for summary judgment; and (3) they lack an adequate remedy by appeal.

This Court requested that the real parties in interest, or any others whose interest would be directly affected by the relief sought, file a response to the petition for writ of

mandamus. *See* TEX. R. APP. P. 52.2, 52.4, 52.8. The plaintiffs filed a response to the petition which primarily addresses the substantive merits of the plaintiffs' claims regarding their causes of actions, the statute of limitations, and the timeliness and adequacy of their expert reports. They argue that this is "an extremely complicated and complex case" involving pending summary judgments filed by defendants Fulp and Fountila, the trial court has been actively handling the case with "generous courtroom hearings," and "the Covid-19 pandemic [has been] challenging all parties and all courts." Nevertheless, the plaintiffs concede that they are "anxious" for rulings on the motion to dismiss and motion for summary judgment, and they request that this Court "notify and advise" the trial court to rule on the pending motions "within a specified reasonable period of time, considering the present circumstances involving Covid-19."

II. STANDARD FOR MANDAMUS RELIEF

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). Mandamus is appropriate when the relator demonstrates that the trial court clearly abused its discretion and the relator has no adequate remedy by appeal. *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding); *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). The relator has the burden of establishing both prerequisites to mandamus relief. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

A trial court abuses its discretion if it acts without reference to guiding rules or principles or in an arbitrary and unreasonable manner. *In re Garza*, 544 S.W.3d at 840; *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding). In addition, because a trial court has no discretion in determining what the law is or in applying it to the facts, a trial court abuses its discretion if it fails to correctly analyze or apply the law. *In re Dawson*, 550 S.W.3d 625, 628 (Tex. 2018) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 135; *see also In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016) (orig. proceeding).

The adequacy of an appellate remedy must be determined by balancing the benefits of mandamus review against the detriments. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 304; *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding). In determining whether the benefits of mandamus outweigh the detriments, we weigh public and private interests and recognize that the adequacy of an appeal depends on the specific facts and circumstances of each case rather than on categorical determination. *In re United Services Auto. Ass'n*, 307 S.W.3d 299, 313 (Tex. 2010) (orig. proceeding); *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 469 (Tex. 2008); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136–37.

III. Failure to Rule

Consideration of a motion that is properly filed and before the trial court is a ministerial act, and mandamus may issue to compel the trial court to act. *See Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (orig. proceeding) (per curiam); *In re Pete*, 589 S.W.3d 320, 321 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding) (per curiam); *In re Henry*, 525 S.W.3d 381, 381 (Tex. App.—Houston [14th Dist.] 2017, orig.

proceeding) (per curiam); *In re Greater McAllen Star Props., Inc.*, 444 S.W.3d 743, 748 (Tex. App.—Corpus Christi–Edinburg 2014, orig. proceeding); *In re Blakeney*, 254 S.W.3d 659, 661 (Tex. App.—Texarkana 2008, orig. proceeding). There is no adequate remedy at law for a trial court's failure to rule because "[f]undamental requirements of due process mandate an opportunity to be heard." *See In re Christensen*, 39 S.W.3d 250, 251 (Tex. App.—Amarillo 2000, orig. proceeding) (citing *Creel v. Dist. Atty. for Medina Cty.*, 818 S.W.2d 45, 46 (Tex. 1991) (per curiam)); *see also In re First Mercury Ins. Co.*, No. 13-13-00469-CV, 2013 WL 6056665, at *3 (Tex. App.—Corpus Christi–Edinburg Nov. 13, 2013, orig. proceeding) (mem. op.).

To obtain mandamus relief for the trial court's refusal to rule on a motion, a relator must establish: (1) the motion was properly filed and has been pending for a reasonable time; (2) the relator requested a ruling on the motion; and (3) the trial court refused to rule. *See In re Greater McAllen Star Props., Inc.*, 444 S.W.3d at 748; *In re Craig*, 426 S.W.3d 106, 106 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding) (per curiam); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding).[3] The relator must show that the trial court received, was aware of, and was asked to rule on the motion. *In re Blakeney*, 254 S.W.3d at 661; *In re Villarreal*, 96 S.W.3d 708, 710 (Tex. App.—Amarillo 2003, orig. proceeding). In this regard, merely filing a document with the district clerk neither imputes the clerk's knowledge of the filing to the trial court nor equates to a request that the trial court rule on the motion. *In re Pete*, 589 S.W.3d at 322; *In re Craig*, 426 S.W.3d at 107.

[3] Stated otherwise, the relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time. *In re Pete*, 589 S.W.3d 320, 321 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding) (per curiam).

This standard allows the trial court to have a "reasonable" time within which to perform its ministerial duty. *See In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam); *In re Greater McAllen Star Props., Inc.*, 444 S.W.3d at 748; *In re Blakeney*, 254 S.W.3d at 661; *In re Shredder Co.*, 225 S.W.3d 676, 679 (Tex. App.—El Paso 2006, orig. proceeding). Whether a reasonable time for the trial court to act has lapsed is dependent upon the circumstances of each case. *See In re Blakeney*, 254 S.W.3d at 662; *In re Chavez*, 62 S.W.3d at 228.

The test for determining what time period is reasonable is not subject to exact formulation, and no "bright line" separates a reasonable time period from an unreasonable one. *See In re Mesa Petroleum Partners, LP*, 538 S.W.3d 153, 157 (Tex. App.—El Paso 2017, orig. proceeding); *In re Greater McAllen Star Props., Inc.*, 444 S.W.3d at 748; *In re Blakeney,* 254 S.W.3d at 661; *In re Chavez*, 62 S.W.3d at 228. We examine a "myriad" of criteria, including the trial court's actual knowledge of the motion, its overt refusal to act, the state of the court's docket, and the existence of other judicial and administrative matters which must be addressed first. *See In re Greater McAllen Star Props., Inc.*, 444 S.W.3d at 748–49; *In re Blakeney,* 254 S.W.3d at 661; *In re Chavez*, 62 S.W.3d at 228–29.

Courts have applied the foregoing tenets to grant mandamus relief concerning various disparate periods of delay. *See In re Mesa Petroleum Partners, LP*, 538 S.W.3d at 159 (granting relief for a delay of more than eight months in rendering a final judgment); *In re ReadyOne Indus., Inc.*, 463 S.W.3d 623, 624 (Tex. App.—El Paso 2015, orig. proceeding) (granting relief for a delay of more than seven months in ruling on a motion to compel arbitration); *In re Shredder Co.,* 225 S.W.3d at 679–80 (granting relief for a

delay of more than six months in ruling on a motion to compel arbitration); *In re Greenwell*, 160 S.W.3d 286, 288 (Tex. App.—Texarkana 2005, orig. proceeding) (granting relief for a six-month delay in ruling on a motion for partial summary judgment); *In re Kleven*, 100 S.W.3d 643, 644–45 (Tex. App.—Texarkana 2003, orig. proceeding) (granting relief for delays of more than three and five months on motions for discovery, sanctions, and for a trial setting); *City of Galveston v. Gray*, 93 S.W.3d 587, 592 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (combined appeal & orig. proceeding) (granting relief for a thirteen-month delay in ruling on a plea to the jurisdiction); *In re Mission Consol. Indep. Sch. Dist.*, 990 S.W.2d 459, 461 (Tex. App.—Corpus Christi–Edinburg 1999, orig. proceeding [mand. denied]) (granting relief for a seven-month delay in ruling on a "no evidence" motion for summary judgment); *In re Ramirez*, 994 S.W.2d 682, 684 (Tex. App.—San Antonio 1998, orig. proceeding) (granting relief for a delay of eighteen months in ruling on a motion for default judgment); *Kissam v. Williamson*, 545 S.W.2d 265, 266–67 (Tex. App.—Tyler 1976, orig. proceeding) (per curiam) (granting relief for a thirteen-month delay in ruling on a petition for incorporation); *see also In re Nomarco, Inc.*, No. 14-20-00129-CV, 2020 WL 1181705, at *1–2 (Tex. App.—Houston [14th Dist.] Mar. 12, 2020, orig. proceeding) (mem. op.) (per curiam) (granting relief for an eight to nine-month delay in ruling on a special appearance); *In re Roland's Roofing Co.*, No. 13-19-00469-CV, 2019 WL 5444399, at *5 (Tex. App.—Corpus Christi–Edinburg Oct. 23, 2019, orig. proceeding) (mem. op.) (granting relief for more than an eight-month delay in ruling on a special appearance); *In re ABC Assembly LLC*, No. 14-19-00419-CV, 2019 WL 2517865, at *3 (Tex. App.—Houston [14th Dist.] June 18, 2019, orig. proceeding) (mem. op.) (per curiam) (granting relief for an approximately eight-month delay in ruling on a motion for

entry of judgment on the jury's verdict); *In re Coffey*, No. 14-18-00124-CV, 2018 WL 1627592, at *1–2 (Tex. App.—Houston [14th Dist.] Apr. 5, 2018, orig. proceeding) (mem. op.) (per curiam) (granting relief for a four-month delay in ruling on an unopposed motion to confirm an arbitration award when the delay in ruling was causing substantial harm); *In re Harris Cty. Appraisal Dist.*, No. 14-19-00078-CV, 2019 WL 1716274, at *3 (Tex. App.—Houston [14th Dist.] Apr. 18, 2019, orig. proceeding) (mem. op.) (granting relief for a six-month delay in ruling on a plea to the jurisdiction).

In considering the alleged period of delay, we note that trial courts have broad discretion in how they conduct business in their courtroom and control their docket. *Clanton v. Clark*, 639 S.W.2d 929, 931 (Tex. 1982); *Jacobs v. State*, 594 S.W.3d 377, 382 (Tex. App.—San Antonio 2019, no pet.). Nevertheless, this discretion is not unlimited, and the trial court has a duty to schedule its cases in such a manner as to expeditiously dispose of them. *King Fisher Marine Serv., L.P. v. Tamez*, 443 S.W.3d 838, 843 (Tex. 2014); *Clanton*, 639 S.W.2d at 930; *In re Tex. Farm Bureau Underwriters*, 374 S.W.3d 651, 658 (Tex. App.—Tyler 2012, orig. proceeding); *In re Blakeney*, 254 S.W.3d at 663.

IV. ANALYSIS

We examine the specific circumstances of this case to determine whether the relators' motions were properly filed and have been pending a reasonable time. *See In re Blakeney*, 254 S.W.3d at 662. There is no dispute that relators' motions were properly filed. Relators filed the motion to dismiss and motion for summary judgment on June 7, 2019, approximately ten months ago. The relators' motion for summary judgment and motion to dismiss were heard by the trial court on July 31, 2019, and again on January 15, 2020, and again on March 11, 2020. Relators have affirmatively requested that the

trial court issue a ruling on these motions on at least two separate occasions, and the plaintiffs do not oppose that relief. The trial court is aware of the motions, relators have requested rulings, and the trial court has indicated his intention to rule on the motions but has not done so. *See In re Greater McAllen Star Props., Inc*., 444 S.W.3d at 748; *In re Chavez*, 62 S.W.3d at 228.

The record before this Court fails to indicate that any special docket conditions or other matters have prevented the trial court from ruling on relators' motion to dismiss and motion for summary judgment. We note that the plaintiffs have referenced the challenges inherent in conducting judicial proceedings during the Covid-19 pandemic in their response to the petition for writ of mandamus, but they do not argue that these considerations prevented the trial court from issuing rulings on the motion for summary judgment and motion to dismiss, and the record fails to indicate that any such problems have negatively impacted the trial court's ability to rule in this case.

This lawsuit has been pending in its current incarnation since 2018. We are no longer at the inception of the case, and the plaintiffs have propounded discovery on the merits. As stated previously, the underlying case arises under the TMLA. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 74.001–.507. The Texas Supreme Court has explained that one of the TMLA's purposes is to reduce expenses and delay and eliminate frivolous claims early in the litigation process. *See*, *e.g*., *Abshire v. Christus Health Se. Tex*., 563 S.W.3d 219, 223 (Tex. 2018) (per curiam) ("We have previously explained that the purpose of the expert report requirement is to weed out frivolous malpractice claims in the early stages of litigation, not to dispose of potentially meritorious claims."); *CHCA Woman's Hosp., L.P. v. Lidji*, 403 S.W.3d 228, 233 (Tex. 2013) (referencing the "statute's

purposes of reducing expense and eliminating frivolous claims early in the lawsuit"); *Loaisiga v. Cerda*, 379 S.W.3d 248, 258 (Tex. 2012) ("[Expert report] requirements are meant to identify frivolous claims and reduce the expense and time to dispose of any that are filed."); *see also Runcie v. Foley*, 274 S.W.3d 232, 234 (Tex. App.—Houston [1st Dist.] 2008, no pet.) ("The legislative purpose [of § 74.351] is to remove unwarranted delay and expense, to accelerate the disposition of non-meritorious cases, and to give hard and fast deadlines for the serving of expert reports."). And finally, the ten-month lapse of time that these motions have been pending is greater than that found to be unreasonable in most of the other cases that have considered these issues. *See*, *e.g.*, *In re Mesa Petroleum Partners, LP*, 538 S.W.3d at 159; *In re ReadyOne Indus., Inc.*, 463 S.W.3d at 624; *In re Shredder Co.,* 225 S.W.3d at 679–80; *In re Greenwell*, 160 S.W.3d at 288; *In re Kleven*, 100 S.W.3d at 644–45; *Mission Consol. Indep. Sch. Dist.*, 990 S.W.2d at 461; *see also In re Nomarco, Inc.*, 2020 WL 1181705, at *1–2; *In re Roland's Roofing Co.*, 2019 WL 5444399, at *5; *In re ABC Assembly LLC*, 2019 WL 2517865, at *3; *In re Coffey*, 2018 WL 1627592, at *1–2; *In re Harris County Appraisal Dist*., 2019 WL 1716274, at *3.

Having considered all the facts and circumstances of this case, we conclude that the trial court abused its discretion in failing to rule within a reasonable period on relators' motion for summary judgment and motion to dismiss. *See In re Mesa Petroleum Partners, LP*, 538 S.W.3d at 159; *In re ReadyOne Indus., Inc.*, 463 S.W.3d at 624; *In re Shredder Co.,* 225 S.W.3d at 679–80. Accordingly, we sustain relators' first two issues.

In their third issue, relators contend that they lack an adequate remedy by appeal to address the trial court's failure to rule on their motions. *See In re H.E.B. Grocery Co*.,

492 S.W.3d at 304; *In re Team Rocket, L.P.*, 256 S.W.3d at 262. With regard to their motion to dismiss, relators assert that they cannot appeal the trial court's failure to rule, that they will forfeit the benefit of their statutory interlocutory appeal if they are required to proceed to trial, and that any post-trial appellate challenge to the trial court's failure to rule on the motion to dismiss would be "pointless." With regard to their motion for summary judgment, relators assert that due process mandates that they receive an opportunity to be heard and that they would be forced to defend "stale claims" which would "irreparably destroy substantive and procedural rights if review is postponed."

We agree with relators' arguments as to both the motion for summary judgment and motion to dismiss. Balancing the benefits of mandamus review against the detriments, *see In re Team Rocket, L.P.*, 256 S.W.3d at 262, there is no appellate remedy to address the trial court's failure to rule and relators possess a right to be heard on their pending pleadings within a reasonable period. *See, e.g.*, *In re Mesa Petroleum Partners, LP*, 538 S.W.3d at 159; *In re ReadyOne Indus., Inc.*, 463 S.W.3d at 624. Further, an appeal is not an adequate remedy when a trial court's refusal to rule on a motion, and therefore enforce a statutory provision, would frustrate the Legislature's intent. *See In re Roberts*, 255 S.W.3d 640, 641 (Tex. 2008) (orig. proceeding) (per curiam); *In re Pollet*, 281 S.W.3d 532, 535 (Tex. App.—El Paso 2008, orig. proceeding). Thus, relators lack an adequate appellate remedy for the trial court's failure to rule on their motion to dismiss and motion for summary judgment within a reasonable time. We sustain relators' third issue.

V. CONCLUSION

The Court, having examined and fully considered relators' petition for writ of mandamus, the response, and the applicable law, is of the opinion that relators have met their burden to obtain relief. Relators' motions were properly filed and have been pending a reasonable time, relators requested rulings on the motions, and the trial court has failed to rule. *See In re ReadyOne Indus., Inc.*, 463 S.W.3d at 624; *In re Shredder Co.*, 225 S.W.3d at 679; *In re Hearn*, 137 S.W.3d at 685; *In re Chavez*, 62 S.W.3d at 228. Accordingly, without addressing the merits of relators' motions, we conditionally grant the petition for writ of mandamus and direct the trial court to rule on relators' motion to dismiss and motion for summary judgment within thirty days of the date of this opinion. *See In re Blakeney*, 254 S.W.3d at 661 ("While we have jurisdiction to direct the trial court to make a decision, we may not tell the court what that decision should be."); *see also In re ReadyOne Indus., Inc.*, 463 S.W.3d at 624; *In re Cunningham*, 454 S.W.3d 139, 143 (Tex. App.—Texarkana 2014, orig. proceeding); *O'Donniley v. Golden*, 860 S.W.2d 267, 269–70 (Tex. App.—Tyler 1993, orig. proceeding); *In re Harris Cty. Appraisal Dist.*, 2019 WL 1716274, at *4. The writ will issue only if the trial court fails to act in accordance with this opinion.

GREGORY T. PERKES
Justice

Delivered and filed the
22nd day of May, 2020.