



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-17-00396-CV**

ALPINE INDUSTRIES, INC. AND  
LANE THOMAS SHINOGLÉ

APPELLANTS

V.

BENJAMIN WHITLOCK AND  
BRIANNA WHITLOCK

APPELLEES

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FROM THE 141ST DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 141-290670-17  
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**MEMORANDUM OPINION<sup>1</sup> AND ORDER**

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We have considered Appellants' unopposed petition for permissive interlocutory appeal from the trial court's order denying their motion to dismiss Appellees' claims. See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(d), (f) (West Supp. 2017); Tex. R. App. P. 28.3(a), (f), (j).

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<sup>1</sup>See Tex. R. App. P. 47.4.

The trial court designated the following issue and three subissues in granting the Appellants' request for permission to file an interlocutory appeal:

Does section 128.053 of the Texas Civil Practice & Remedies Code require dismissal of this lawsuit because [Appellees] did not serve an expert report within 90 days of filing their Original Petition? The following sub-issues are subsumed within this issue:

- a. Does a defendant's agreement and signature to an Agreed Scheduling Order setting expert disclosure dates extend the deadline to submit an expert report under Civil Practice and Remedies Code section 128.053?
- b. Does section 128.053's expert report requirement violate the Open Courts or Due Process of Law provisions of the Texas Constitution?
- c. Does section 128.053's expert report requirement apply to claims against an employee of a "sport shooting range"?

We grant the petition and will consider the above-framed issue and three subissues.

Appellants' notice of appeal is deemed filed today. See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(f); Tex. R. App. P. 28.1, 28.3(k). Appellants must file a copy of this order with the trial court clerk. See Tex. R. App. P. 28.3(k).

The clerk's record and reporter's record are due on or before **Monday, December 18, 2017**. See Tex. R. App. P. 26.1(b), 35.1(b).

Appellants' brief will be due twenty days after the appellate record is filed, and Appellees' brief will be due twenty days after Appellants file their brief. See Tex. R. App. P. 38.6(a)–(b).

The clerk of this court is directed to transmit a copy of this memorandum opinion and order to the attorneys of record, the trial court judge, the trial court clerk, and the court reporter.

PER CURIAM

PANEL: SUDDERTH, C.J.; GABRIEL and KERR, JJ.

DELIVERED: December 7, 2017