COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

AUSTIN KONOGERIS, Individually and as Executor of the Estate of ELIZABETH KONOGERIS, JENNIFER McEACHERN, ANDREW KONOGERIS, and JIMMY J. KONOGERIS,	§	No. 08-21-00015-CV
	§	Appeal from the
Appellants,	§	35th District Court
v.	§	of Brown County, Texas
PINNACLE HEALTH FACILITIES GP I, LLC,	§	(TC# CV2002078A)
Appellee.	§	

O P I N I O N[1]

Elizabeth Konogeris died following her admission to a skilled nursing facility. Her estate and family sued the limited partner that owned and operated the skilled nursing facility, but the limited partner took bankruptcy and was severed from the suit. The general partner, also named in the suit, then moved for summary judgment contending that (1) it could not be held directly liable for the death, as it was not a health care provider, and (2) it could not be held vicariously liable for the actions of its limited partner, given the limited partner's absence from the suit.

[1] This case was transferred from our sister court in Eastland, and we decide it in accordance with the precedents of that Court to the extent required by TEX.R.APP.P. 41.3.

Konogeris's estate and family members amended their petition to expressly allege a theory of vicarious liability—one not in their original petition—and then claimed that the amendment precluded the trial court granting summary judgment on the newly added theory. The trial court, however, granted the summary judgment without requiring Appellee to amend its motion. Because the general partner anticipated the inclusion of a vicarious liability claim and addressed it as part of the summary judgment motion, and because its motion was otherwise meritorious, we affirm the trial court's order granting the summary judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellants are the family members and the executor of the Estate of Elizabeth Konogeris (collectively, the Estate). They filed a health care liability claim against several entities and individuals, contending that Elizabeth died from negligent care that she received while residing in a skilled nursing facility known as the Oaks at Radford Hills (the Oaks).[2] Significant to this appeal, the Estate brought claims against Appellee Pinnacle Health Facilities GP I, LLC. (Pinnacle GP), as well as Pinnacle GP's limited partner, Pinnacle Health Facilities of Texas, X, L.P. (Pinnacle X), which owned and operated the Oaks. After Pinnacle X filed a suggestion of bankruptcy, the trial court granted the Estate's motion to sever Pinnacle X from the lawsuit, allowing the Estate's case to go forward against Pinnacle GP and the other defendants.

Pinnacle GP then filed a traditional motion for summary judgment, alleging that it could not be held either directly or vicariously liable for Elizabeth's death. As part of that motion, Pinnacle GP argued that it could not be held directly liable for Elizabeth's death because (1) it did not operate the Oaks; (2) it had no employees working at the facility; and (3) it had "never provided

[2] The Estate also contends that Elizabeth received negligent care at another skilled nursing facility to which she was transferred at some point. However, this appeal only relates to the care she received at the Oaks.

or overseen the provision of patient care and treatment" for Elizabeth. Instead, Pinnacle GP alleged that Pinnacle X was the licensed health care provider responsible for operating the Oaks, and that Pinnacle X's employees had been responsible for providing Elizabeth's care. In support of these allegations, Pinnacle GP submitted the affidavit of Robert Riek, the manager of both Pinnacle entities. According to Riek, Pinnacle X was the "sole licensed operator and sole participant in control of the operation of [the Oaks]." He also stated that all the staff at the Oaks were employed by and supervised by Pinnacle X. Because Pinnacle GP has "no employees, has never been licensed by the State of Texas to provide health care services and has no licensed staff" at the Oaks or elsewhere, it therefore had no "control" over Elizabeth's care. And Riek claimed that Pinnacle GP's "sole connection" to Pinnacle X was to act as its general partner.

Pinnacle GP's motion also addressed the question of whether it could be held vicariously liable for Pinnacle X's conduct under either common law or statutory principles—even though the Estate had yet to allege a theory of vicarious liability. First, Pinnacle GP argued that under common law principles, only Pinnacle X could be held vicariously liable for its employees' alleged negligence in providing care to Elizabeth, as it was Pinnacle X that controlled their actions. Next, Pinnacle GP argued that under the Texas Business Organizations Code, it could not be held liable as a general partner for Pinnacle X's actions unless there was a judgment entered against Pinnacle X. In particular, Pinnacle GP pointed out that the Code only makes a general partner responsible for a limited partner's "debts and liabilities." Because Pinnacle X, the limited partner, had been severed from the suit before its liability had been determined, no judgment could be entered against it in the current proceeding. In other words, Pinnacle GP argued that because its liability was wholly dependent on a finding that Pinnacle X was liable to Appellees for Elizabeth's

death, there was no basis for the Estate's claim against it, given Pinnacle X's absence from the suit.

The Estate responded to the motion for summary judgment in two ways. First, the Estate amended its pleadings, expressly claiming that Pinnacle GP was liable for Pinnacle X's alleged negligence as its general partner as the negligence occurred during the "ordinary course of the business partnership."[3] The Estate then filed a response to Pinnacle GP's motion for summary judgment that argued that Pinnacle GP needed to amend its motion to address the newly raised theory of vicarious liability. The Estate limited its response to this procedural issue, and it presented no evidence or made any legal argument to support its claim that Pinnacle GP could be held vicariously liable for Pinnacle X's acts or omissions. Nor did the Estate present any evidence to support a finding that Pinnacle GP could be held directly liable for Elizabeth's death.

Pinnacle GP, declined to amend its summary judgment motion, and instead filed a reply in which it elaborated on the legal arguments it first made in its motion, again contending that it could not be held either directly or vicariously liable for Pinnacle X's actions. The trial court granted Pinnacle GP's motion. The trial court severed the claims against Pinnacle GP from the remaining defendants and this appeal followed.

II. Issues on Appeal

Although included under a single issue, the Estate raises two separate arguments for why the trial court erred in granting summary judgment. First, the Estate re-urges what it claimed in its summary judgment response: the trial court could not grant a summary judgment on a claim added to the petition after the summary judgment motion was filed. Rather, the Estate claims that

[3] Although the Estate's original petition is not a part of the appellate record, the parties agree that the Estate alleged for the first time in their amended petition that Pinnacle GP could be held liable for Pinnacle X's actions under an agency theory.

Pinnacle GP had to amend its summary judgment motion to address the new claim before the trial court could grant summary judgment in Pinnacle GP's favor. Second, the Estate argues that the Texas Business Organizations Code allows it to bring a claim against Pinnacle GP premised on Pinnacle X's alleged negligence, even if Pinnacle X is absent from the suit. Based on this record, we disagree with both arguments.

III. STANDARD OF REVIEW

We review a trial court's order granting summary judgment de novo. *Cmty. Health Sys. Prof'l Services Corp. v. Hansen*, 525 S.W.3d 671, 680 (Tex. 2017). To prevail on a traditional motion for summary judgment, a movant must establish that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Id.* at 681; TEX.R.CIV.P. 166a(c); *see also Eagle Oil & Gas Co. v. TRO-X, L.P.*, 619 S.W.3d 699, 705 (Tex. 2021) ("In a traditional motion for summary judgment, the moving party must show that no genuine dispute exists as to any material fact such that the party is entitled to judgment as a matter of law[.]"). A defendant moving for a traditional summary judgment has the burden to conclusively negate at least one element of each of the plaintiff's theories of recovery, or plead and conclusively establish each element of an affirmative defense. *Science Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997). An issue is conclusively established "if reasonable minds could not differ about the conclusion to be drawn from the facts in the record." *Hansen*, 525 S.W.3d at 681. A court must grant a "traditional" motion for summary judgment "forthwith if [the summary judgment evidence] show[s] that . . . there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out." *Draughon v. Johnson*, 631 S.W.3d 81, 87 (Tex. 2021), *citing* TEX.R.CIV.P. 166a(c). When, as here, the trial court's order does not specify the grounds for summary judgment, we must affirm the summary

judgment if any of the theories presented to the trial court and preserved for appellate review are meritorious. *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996).

IV. PINNACLE GP EXPRESSLY ADDRESSED VICARIOUS LIABILITY IN ITS MOTION FOR SUMMARY JUDGMENT

The Estate first argues that the trial court erred in granting summary judgment without requiring Pinnacle GP to amend its summary judgment motion to respond to the newly raised vicarious liability allegation. In particular, the Estate contends that its amended petition set forth a new "cause of action under Section 152.303(a)(1)" of the Texas Business Organizations Code. That statute provides that: "A partnership is liable for loss or injury to a person . . . caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting . . . in the ordinary course of business of the partnership." TEX.BUS.ORGS.CODE ANN. § 152.303(a)(1).[4] And, according to the Estate, the trial court could not grant summary judgment until Pinnacle GP amended its motion for summary judgment to address this newly raised "cause of action." We disagree.

To begin, we agree that in general a trial court may not grant summary judgment on grounds that were not presented or addressed by the moving party in its motion. *See Nall v. Plunkett*, 404 S.W.3d 552, 555 (Tex. 2013) (per curiam); *G & H Towing Co. v. Magee*, 347 S.W.3d 293, 297 (Tex. 2011) (per curiam) (recognizing that "granting a summary judgment on a claim not addressed in a summary judgment motion is, as a general rule, reversible error"); TEX.R.CIV.P. 166a(c) ("Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal."). As a corollary to this

[4] The Estate's amended petition did not cite to this provision, nor did it expressly raise section 152.303 in its response to the motion for summary judgment. Even at that, the text of the provision addresses the liability of a partnership for the conduct of a partner, not the liability of a partner for the conduct of the partnership or another partner.

principle, when a plaintiff amends its pleadings to add a new claim or theory of recovery after the defendant has moved for summary judgment, the defendant must ordinarily file an amended summary judgment motion to address the newly raised claims or theories before the trial court may grant a summary judgment on the entire plaintiff's case. *See Blancett v. Lagniappe Ventures, Inc.*, 177 S.W.3d 584, 592 (Tex.App.--Houston [1st Dist.] 2005, no pet.); *see also Rust v. Texas Farmers Ins. Co.*, 341 S.W.3d 541, 552 (Tex.App.--El Paso 2011, pet. denied) (if an "amended pleading raises a new theory of liability, a summary judgment cannot be granted as to those new theories"); *Vertex Servs., LLC v. Oceanwide Houston, Inc.*, 583 S.W.3d 841, 852 (Tex.App.--Houston [1st Dist.] 2019, no pet.) (when a plaintiff amends its petition to add claims against a summary-judgment movant, the movant may not address the new claims by reply but must instead file an amended or supplemental motion).

But it is not necessary for the defendant to file an amended or supplemental motion if its original summary judgment motion was broad enough to encompass and address the plaintiff's newly raised claims or theories of liability, and so long as the motion negates at least one element of the new and previously asserted claims. *See Rotating Servs. Indus., Inc. v. Harris*, 245 S.W.3d 476, 487 (Tex.App.--Houston [1st Dist.] 2007, pet. denied) (court may grant summary judgment without any amended motion where the original "motion for summary judgment conclusively negates a common element of the newly and previously pleaded claims or when the original motion is broad enough to encompass the newly asserted claims"); *see also Judwin Props., Inc. v. Griggs & Harrison*, 911 S.W.2d 498, 502 (Tex.App.--Houston [1st Dist.] 1995, no writ) (where moving parties' motion for summary judgment addressed the claims that the nonmovant subsequently specified and "clarified" in its amended counterclaim, there was no need for the moving party to amend its summary judgment motion); *Rust*, 341 S.W.3d at 552 (an "amended or supplemental

motion is not required when the grounds asserted in the motion for summary judgment conclusively negate a common element of the previously and newly pleaded claims, or when the motion is broad enough to encompass the newly asserted claims"); *Callahan v. Vitesse Aviation Servs., LLC*, 397 S.W.3d 342, 350-51 (Tex.App.--Dallas 2013, no pet.) (same).

Pinnacle GP preemptively addressed the vicarious liability theory issue in its summary judgment motion. The Estate, however, argues that Pinnacle GP's motion was not broad enough to address the specific issue of whether it could be held vicariously liable for Pinnacle X's alleged negligence under the Texas Business Organizations Code. Rather, it contends that Pinnacle GP instead raised that issue for the first time in its reply to its motion. The Estate correctly points out that a party moving for summary judgment may not wait to raise a new issue or ground for granting summary judgment in its reply. S*ee Sanders v. Capital Area Council*, 930 S.W.2d 905, 911 (Tex.App.--Austin 1996, no writ) (because the summary judgment rules require that the grounds for granting the judgment must be set forth in the motion itself, "[b]y definition, this . . . means that in the absence of a nonmovant's consent, a movant may not raise a new ground for summary judgment in a reply to the nonmovant's response."); *Cmty. Initiatives, Inc. v. Chase Bank of Texas, N.A.*, 153 S.W.3d 270, 280 (Tex.App.--El Paso 2004, no pet.) ("a movant may not use a reply brief to meet the specificity requirement or to assert new grounds for summary judgment")

Contrary to the Estate's arguments, however, Pinnacle GP did address whether it could be held vicariously liable for Pinnacle X's actions under the Texas Business Organizations Code in its motion for summary judgment. To be sure, Pinnacle GP elaborated on its position in its reply, adding citations to the Code and case law, but its argument remained the same. It urged from the outset that it could not be held vicariously liable for Pinnacle X's alleged negligence as Pinnacle

X's general partner until a judgment was entered against Pinnacle X finding it liable for the death—an event that could not happen given Pinnacle X's absence from the suit.

The Estate did not file any exceptions or make any objections asserting that Pinnacle GP's summary judgment motion was unclear or ambiguous.[5] Nor does the record support a finding that the Estate did not understand that Pinnacle GP was raising vicarious liability in its summary judgment motion, as it responded to the motion by immediately amending its petition to allege that Pinnacle GP could be held vicariously liable for Pinnacle X's alleged negligence. We conclude that Pinnacle GP's motion for summary judgment put the Estate on notice that it was disclaiming vicarious liability, and Pinnacle GP did not, as the Estate now contends, wait to raise the issue in its reply. Thus, because Pinnacle GP's summary judgment motion was broad enough to encompass the issue of vicarious liability, and because the Estate had the opportunity to address the issue in its response, it would have served no purpose to require Pinnacle GP to file an amended summary judgment to re-address the issue. *See Vertex Servs.*, 583 S.W.3d at 852 (finding that it would serve no purpose to require the defendant to amend its summary judgment motion on an issue that the plaintiff had the "occasion to address").

Accordingly, it was not error for the trial court to rule on the Estate's newly pled vicarious liability claim without first requiring Pinnacle GP to amend its motion. *See Rust*, 341 S.W.3d at 552 (finding that trial court did not err in granting summary judgment on the nonmoving parties' newly pleaded defense and indemnification issue, where the movant's motion for summary judgment was broad enough to encompass the newly raised issues); *see also 1320/1390 Don*

[5] If the nonmoving party believes that the grounds relied on by a movant in its summary judgment motions are "unclear or ambiguous," the moving party may object or file exceptions to the motion. *See Nall v. Plunkett*, 404 S.W.3d 552, 555 (Tex. 2013). However, to preserve such a complaint for appellate review, the nonmoving party "must present its objections to a summary judgment motion expressly by written answer or other written response to the motion in the trial court or that objection is waived." *D.R. Horton-Texas, Ltd. v. Markel Int'l Ins. Co.,* 300 S.W.3d 740, 743 (Tex. 2009).

Haskins, Ltd. V. Xerox Com. Solutions, LLC, 584 S.W.3d 53, 72 (Tex.App.--El Paso 2018, pet. denied) (trial court properly granted summary judgment in movant's favor, where movant addressed all dispositive issues in its summary judgment motion).

V. THE ESTATE COULD NOT BRING A DIRECT CLAIM AGAINST PINNACLE GP

The Estate next argues that even if the issue of Pinnacle GP's vicarious liability was properly before the trial court in the summary judgment proceedings, the trial court erred in dismissing Pinnacle GP from the lawsuit. The Estate argues that it had a right to proceed "directly" against Pinnacle GP for Pinnacle X's alleged negligence, and that it did not matter that Pinnacle X had been severed from the lawsuit. We disagree for the following reasons.

First, to be held directly liable on a health care liability claim, a defendant must be either a physician or a health care provider who provided substandard care, which in turn led to a claimant's injury or death. *See Lake Jackson Med. Spa, Ltd. v. Gaytan*, 640 S.W.3d 830, 840 (Tex. 2022) (a health care liability claim under the Medical Liability Act "includes three basic elements: (1) the defendant must be a physician or health care provider; (2) the claim must concern treatment, lack of treatment, or a departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care; and (3) the defendant's conduct must proximately cause the claimant's injury or death"). In a similar situation, our sister court in Amarillo held that the general partners of an entity that owned a nursing home facility could not be held directly liable for the negligent treatment that led to a resident's death, where they did not provide any medical treatment to her or otherwise participate in her care. *See Cresthaven Nursing Residence v. Freeman*, 134 S.W.3d 214, 220-21 (Tex.App.--Amarillo 2003, no pet.); *see also Doctors Hosp. at Renaissance, Ltd. v. Andrade*, 493 S.W.3d 545, 551 (Tex. 2016) (holding that general partner—which was not in the health care business—

could not be held directly liable for the alleged negligence of a doctor who was part of a limited partnership that owned the hospital). Here, the undisputed evidence established that Pinnacle GP was neither a physician nor a health care provider. Further, Pinnacle GP did not control or supervise any of the individuals who provided treatment to Elizabeth. Pinnacle GP therefore could not be held directly liable on the Estate's health care liability claim.

As Pinnacle GP acknowledges, however, given its status as Pinnacle X's general partner, it could be held vicariously or derivatively liable for any judgment entered against Pinnacle X under the Texas Business Organizations Code. *Freeman*, 134 S.W.3d at 220 (recognizing that although general partners of entity that owned a nursing home facility could not be held directly liable for the negligent treatment that led to a resident's death, they could be held vicariously liable for any judgment rendered against the entity); *see also Asshauer v. Wells Fargo Foothill*, 263 S.W.3d 468, 474 (Tex.App.--Dallas 2008, pet. denied) (recognizing that in a limited partnership, "the general partner is always liable for the debts and obligations of the partnership"); *see also Sunbelt Serv. Corp. v. Vandenburg*, 774 S.W.2d 815, 817 (Tex.App.--El Paso 1989, writ denied) ("General partners of a limited partnership are personally liable to creditors for the limited partnership's debts the same as a partner in a general partnership."); *American Star Energy & Minerals Corp. v. Stowers*, 457 S.W.3d 427, 429 (Tex. 2015) (recognizing that a partner is "jointly and severally liable for all obligations of the partnership."), *citing* TEX.BUS.ORGS.CODE ANN. § 152.304(a) (subject to limited exceptions, "all partners are jointly and severally liable for all obligations of the partnership"). Thus, when Pinnacle X was a named defendant in the lawsuit, the Estate had a viable vicarious liability claim against Pinnacle GP. The Estate's argument that it also has a claim against Pinnacle GP in the absence of Pinnacle X, or a judgment against Pinnacle X, is unavailing.

The Estate pitches its argument on the holding in *American Star Energy and Minerals Corp. v. Stowers*, 457 S.W.3d 427 (Tex. 2015). That case, however, supports the opposite conclusion. In *Stowers*, the court recognized that section 152.305 of the Texas Business Organizations Code "allows a partner to be sued in [an] action against the partnership or in a separate action." *Stowers*, 457 S.W.3d at 432, *citing* TEX.BUS.ORGS.CODE ANN. § 152.305 ("An action may be brought against a partnership and any or all of the partners in the same action or in separate actions."). The Estate interprets this language to mean that it could bring a "separate action" against Pinnacle GP for Pinnacle X's alleged negligence given its status as Pinnacle X's general partner, and that its claim against Pinnacle GP can therefore survive Pinnacle X's severance from the case. We disagree.

In *Stowers*, the plaintiff sued a partnership for breach of contract, and after protracted litigation, the plaintiff obtained a judgment against the partnership. *Id.* at 428. But when the plaintiff discovered that the partnership was undercapitalized, it filed a separate action against the partners to enforce the judgment to collect on the partners' assets. *Id.* at 429. The partners sought dismissal of the suit, arguing that the suit was barred by the four-year statute of limitations for breach-of-contract cases. *Id.* The court disagreed, however, concluding that the cause of action against the partners did not accrue—and the statute of limitations did not start running—until the judgment was entered against the partnership. *Id.* at 433-34. In reaching this conclusion, the court recognized that the Texas Business Organizations Code treats issues of liability and enforcement separately. It noted that a partner's liability for a partnership's debts and obligations is wholly "derivative" and "contingent" on the partnership's liability. *Id.* at 432. And given the "derivative and contingent nature of that liability," the court held that the "only obligation for which a partner is really responsible is to make good on the judgment against the

partnership, and generally only after the partnership fails to do so." *Id.* Thus, the court recognized that a "claim must be litigated against the partnership so that its obligation is determined, reduced to damages, and fixed in a judgment," before it can be enforced against a partner. *Id.*

The court bolstered its conclusion that liability and enforcement actions can be treated as separate causes of action by referring to the language in section 152.305 of the Code. That provision allows a partner to be sued in the same action against the partnership or in a separate action. *Id.* In particular, the court found that "[e]specially considering its enforcement scheme, this rule suggests the Legislature considers the collection action to be separate from the underlying litigation." *Id.* According to the court, the "only practical reason to sue a partner separately is to be able to sue him later—a concurrent separate suit would presumably be consolidated or sit pending disposition of the case against the partnership." *Id.* In turn, the court recognized that the "most likely time, if not the only logical time, a plaintiff would do so is when the partnership fails to satisfy the judgment." *Id.* Thus, it reasoned that in "allowing separate suits, the legislature must have contemplated that at least some subsequent actions against partners would be brought outside of the original limitations period." *Id.* And the court therefore concluded that although the plaintiff could have named the partners in the original suit along with the partnership, it was not required to do so, and it was instead entitled to wait to file a separate enforcement action against the partners after it received its judgment against the partnership was finalized. *Id.*

The takeaway from *Stowers* is that a plaintiff has two choices when it wishes to sue a partner based on its derivative liability under the Code. First, the plaintiff may name both the partnership and its partners in one lawsuit, and if successful, the suit could result in a joint judgment against both. Second, the plaintiff may bring its initial claim solely against the

partnership, and if a judgment is entered against the partnership, the plaintiff may then bring a separate enforcement action against the partners to collect on the partner's assets if the partnership's assets cannot satisfy the judgment against it. But the case does not support a basis for a plaintiff to file a separate suit against a partner for a partnership's debt or obligation before an adjudication of the partnership's liability.

Thus, the Estate had a right to name both Pinnacle X and Pinnacle GP—as its general partner—in this litigation, based on Pinnacle GP's derivative liability for Pinnacle X's debts and obligations under the Code. Once Pinnacle X was severed from the lawsuit, however, there was no possibility that a judgment could be entered against it, and in turn, no possibility that Pinnacle GP could be held derivatively liable in the pending lawsuit. *See El Paso Ref., Inc. v. I.R.S.*, 205 B.R. 497, 500 (W.D. Tex. 1996) (in order to hold a general partner vicariously liable for a debt, there must first be an assessment against the limited partnership, as the general partner cannot "be liable for an obligation which never existed against the limited partner"). So there is no basis for allowing the Estate to proceed in what is in effect a "separate action" against Pinnacle GP, where Pinnacle GP has no independent liability to the Estate, and there is no chance that a judgment will be entered against Pinnacle X which could be enforced against Pinnacle GP.[6]

In a final argument, the Estate contends that the Texas Business Organizations Code allows Pinnacle GP to remain as a defendant in the case, given Pinnacle X's status as a "debtor in bankruptcy." In support of that argument, the Estate relies on section 152.306 of the Code, which provides, among other things, that in enforcing a judgment, a creditor may proceed "directly against the property of one or more partners if . . . the partnership is a debtor in bankruptcy." TEX.BUS.ORGS.CODE ANN. § 152.306 (c) (1). The Estate reads this statute to mean that it may

[6] To be clear, we are not confronted with a situation where the Estate obtained relief from the bankruptcy stay, or otherwise obtained a determination of Pinnacle X's liability in the bankruptcy court.

proceed "directly" against Pinnacle GP given Pinnacle X's bankruptcy filing. But, by its express terms, the statute only addresses situations in which a party has already obtained a judgment against a partnership and the party is seeking to enforce the judgment against one of the partners. *See Lemon v. Hagood*, 545 S.W.3d 105, 114-15 (Tex.App.--El Paso 2017, pet. denied) (recognizing the need to obtain a judgment against the partnership before the collection provisions of section 152.306 are triggered), *citing Stowers*, 457 S.W.3d at 431 (a "claim must be litigated against the partnership so that its obligation is determined, reduced to damages, and fixed in a judgment" before a collection proceeding may be initiated under the statute). And as the Estate has yet to obtain a judgment against Pinnacle X that it is seeking to enforce against Pinnacle GP, we find this Code provision to be inapplicable.

We thus conclude that given Pinnacle X's severance from the suit, there is no basis for holding Pinnacle GP liable in the Estate's pending health care liability suit. The trial court therefore did not err in granting summary judgment disposing of the Estate's claim against Pinnacle GP.

The Estate's Issue One is overruled.

VI. CONCLUSION

The trial court's judgment is affirmed.

JEFF ALLEY, Justice

August 19, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.