NUMBER 13-17-00172-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE KANDI TORRES, KEISHA COLLINS, OLIVER BELL, JENNIFER SMITH, AND JANET SALLAS

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Hinojosa
Memorandum Opinion by Justice Rodriguez[1]

Relators Kandi Torres, Keisha Collins, Oliver Bell, Jennifer Smith, and Janet Sallas filed a petition for writ of mandamus and emergency motion for temporary relief in the above cause on April 3, 2017. Through this original proceeding, relators, who are prison officials, seek to compel the trial court to vacate an order requiring them to respond to

[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."); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

discovery requests propounded by the real party in interest, inmate Michael A. McCann.[2] Relators contend that the trial court has abused its discretion in requiring them to respond to discovery pertaining to the merits of McCann's lawsuit while their jurisdictional plea remains pending. We conditionally grant the petition for writ of mandamus.

I. BACKGROUND

On August 23, 2013, McCann filed suit against multiple prison employees[3] alleging that they had retaliated against him for utilizing the prison grievance system and alleging that they had stolen his postal stamps, withheld and destroyed his mail, and fraudulently identified his mail and legal work as prohibited "offender to offender mail" or as prohibited sexually explicit materials. McCann alleged that the defendants violated his constitutional right to freedom of speech and committed fraud, conspiracy to commit fraud, theft, conspiracy to commit theft, retaliation, and violations of RICO. *See* 15 U.S.C.A. §78j(b) (West, Westlaw through P.L. 115-22) (comprising the Racketeering Influenced and Corrupt Organizations Act). McCann sought declaratory and injunctive relief and the recovery of his court costs.

On June 9, 2016, this Court considered an interlocutory appeal arising from this cause and affirmed in part and reversed in part the trial court's denial of summary judgment regarding the prison officials' assertions of immunity. *See Torres v. McCann*,

[2] This cause arises from trial court cause number B-13-1344-CV-A in the 156th District Court of Bee County, Texas, and the respondent in this original proceeding is the Honorable Joel Johnson, a visiting judge presiding over the case. *See generally* TEX. R. APP. P. 52.2.

[3] The defendants identified in McCann's original petition included: Kandi Torres, Teresa Myers, Jennifer Sellers, Jane and John Does of the McConnell Unit Mailroom, Olivia Galan, K. Collins, Jane and John Does of the D.R.C., Oliver J. Bell, and Jane and John Does of the Mail Systems Coordinator's Panel.

No. 13-15-00187-CV, 2016 WL 3225880, at *7 (Tex. App.—Corpus Christi June 9, 2016, no pet.) (mem. op.). We affirmed the trial court's denial of summary judgment regarding McCann's claims concerning theft, conspiracy to commit theft, fraud, conspiracy to commit fraud, and RICO violations, and we reversed the trial court's denial of summary judgment as to McCann's First Amendment and retaliation claims and rendered judgment in appellants' favor on these claims. *See id.*

On September 23, 2016, following remand, Torres, Collins, and Bell filed a motion to dismiss the case for lack of jurisdiction on grounds that McCann's causes were barred by sovereign and statutory immunity.

On October 10, 2016, McCann filed a first amended petition in which he eliminated some defendants and added some defendants.[4] In this amended pleading, McCann expanded the factual allegations underlying his causes of action against the prison officials and added a request for punitive damages and prejudgment and postjudgment interest.

On October 14, 2016, Torres, Collins, Bell, Smith, and Sallas, relators herein, filed an amended motion to dismiss the case for lack of jurisdiction. Relators again asserted that McCann's claims were barred by sovereign immunity and statutory immunity under the Texas Torts Claims Act.

In November of 2016, McCann propounded requests for admissions, interrogatories, and requests for production to relators. These discovery requests

[4] The defendants identified in McCann's first amended petition include: Kandy Torres, Janet D. Sallas, Keisha Collins, Jennifer Smith, and Oliver Bell. McCann asserted that these defendants were sued in their "official and unofficial" capacities.

generally address the litigation and McCann's substantive claims against relators.[5] Relators did not respond to the discovery requests, and some time thereafter, McCann filed a motion to compel.

[5] The discovery requests propounded to the relators are generally identical with the exception of discovery propounded to one relator. The twenty-six requests for admissions ask the relators to admit that they are properly named defendants in the suit; Bell executed a written contract with McCann; Bell authorized relators to sign the mail forms and the forms are genuine; relators committed fraud when filling out the dispositions on the mail forms; Bell authorized the format of the mail forms; relators submitted exhibits to the trial court and this Court "in violation of the Michael Morton Act"; relators denied, via the mailroom, legal work for McCann; relators failed to follow their policy when denying McCann's mail; the *Accardi* doctrine applies to relators' failure to follow their own policies, *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); relators stole McCann's postage stamps; McCann made a written demand that relators pay for the stolen stamps; relators had not paid the cost of postage and other materials stolen; relators made an oral statement to McCann about stealing his postage; McCann made a written demand for payment of the property stolen; relators "paid part of the postage stolen"; relators made McCann "strip to receive his mail at the mailroom"; relators admitted that they made McCann "strip" for his mail; relators acted as "three or more people" when denying mail; Smith is responsible for answering "step two" grievances regarding mailroom denials; Smith answers the Directors Review Committees (DRC) submissions from the mailroom; the DRC has allowed McCann to receive other inmates' legal work; McCann has sent postage to family "numerous times" before relators stole the postage for this suit; relators knew their conduct in this suit was not according to policy; and McCann's legal material for this suit was stolen by relators.

McCann's eleven interrogatories, with subparts, asked relators for the following information: identify each person answering these interrogatories, supplying information, or assisting in any way with the preparation of the answers; identify every person who is expected to be called to testify at trial, including your experts; state the legal theories and describe in general the factual bases for your defenses; identify every person who has impeachment or rebuttal evidence and describe the evidence each person has; have you have ever been convicted of a felony or a crime involving moral turpitude; did you execute any written contract that is part of this civil action; did you sign any I-153 form for McCann; did you sign any I-154 form for McCann; if you contend the enforcement of the contract (forms I-153 and I-154) would be unconscionable, state the factual basis for the contention; if you have been involved in any other lawsuits within the last five years: state the date of the lawsuit, where it was filed, the names of the parties involved, the nature of the claim, whether you filed suit or the suit was filed against you, and the outcome of the lawsuit; did you submit any type of complaint, report, or any inter-office communication with other employees about McCann's conduct in the past six years; and did you authorize the 1-153 and 1-154 forms to be used by the mailroom against McCann.

The set of requests for admissions and requests for production to one relator are different. The requests for admissions for this individual requested that the individual admit: you have seized stamps from McCann; you have failed to return all stamps seized from McCann; fraud has been committed on an I-153 written by the mailroom, "c/o Plaintiff"; you failed to complete the I-153 with actual papers taken; illegal work is seized and you failed to admit this on the I-153; you failed to put the actual number of stamps seized on the I-153; you have taken material that is not contraband; you knowingly have taken material that the D.R.C. has previously reversed; you retaliate when you can seize legal material and letters so as to delay mail to McCann; the dates on I-153s entered by you are not correct; quality control should be a major factor for the I-153s; numbered I-153 forms should be implemented; you have changed job titles two times at McConnell Unit; you were rude and unprofessional with McCann at the mailroom; you threaten to take McCann's stamps and not give them back; there were witnesses there when you threatened McCann; you

On January 26, 2017, Torres, Collins, Smith, Sallas, and Bell filed objections to McCann's motion to compel and a motion for a protective order. They asserted that McCann's motion to compel was premature because their motion to dismiss was still pending, and a resolution of the motion to dismiss would potentially dismiss all of McCann's claims. These defendants sought a protective order against all discovery until the trial court ruled on their amended motion to dismiss for lack of jurisdiction.

The trial court set the defendants' amended motion to dismiss for hearing on February 1, 2017. The defendants filed a bench brief in support of their amended motion to dismiss on January 31, 2017.

At the February 1, 2017 hearing, the parties discussed the defendants' motion to dismiss, but also discussed the status of McCann's pending discovery requests. Counsel for the defendants requested a ruling on their motion to dismiss because, if meritorious, "there would be no reason to engage in discovery because the case would be dismissed." In turn, McCann alleged that the defendants' counsel had failed to give him "any discovery whatsoever." In discussing this issue, the trial court acknowledged having held a previous hearing on discovery and stated that "there's no discovery since the last order," and acknowledged that McCann had filed "a motion to compel the discovery that was agreed to and/or authorized that we talked about at our last hearing."

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work with impunity while in the mailroom; you have lost "well over 100 pounds since leaving the mailroom"; your "self-esteem was very low while working at the mailroom"; and you "took your anger out" on McCann and the other inmates. McCann's eleven requests for production asked for the production of: his complete prison record; any and all I-153 forms that have McCann's name on them; complete copies of all material seized by I-153; complete copy of "Board Policy 03.91, all fifteen (15) pages"; complete names of the persons on the Directors Review Committee in Huntsville; complete names of the persons at Mail Systems Coordinators Panel (MSCP); any and all rules, regulations and policies governing the mailroom; any and all rules, regulations, policies, and posted orders concerning stamps; any and all rules, regulations, and policies regarding sending out and receiving legal material through the mailroom; and any and all rules, regulations, and policies regarding photographs.

At the hearing, the trial court appears to have agreed with McCann that the defendants had agreed to produce discovery at a previous hearing: "There's no doubt in my mind. They've reneged on their deal." The trial court stated that "[t]hey've reneged on my order" and "effectively violated my order." At the conclusion of further discussions, the trial court instructed counsel from the Office of the Attorney General (the OAG) that, "[s]pecifically, you guys are ordered to comply with my discovery order." The trial court then set a future hearing on the "status of discovery."

The trial court held a pretrial hearing on March 3, 2017, regarding the status of discovery and the trial setting. McCann alleged that the defendants had not responded to his requests for admissions or his interrogatories. He alleged that they had answered "a lot" of his requests for production, comprising "over 500 pages," but had failed to produce any "policies" that he had requested. Counsel for the defendants asserted that they had responded to the requests for admission "this week" and McCann probably had not received them yet. Counsel asserted that they were "still working" on the interrogatories, but referenced that it was "difficult" because a number of the relators were no longer employed with the TDCJ. Counsel acknowledged that he had neither requested an extension of time from McCann to file the answers nor filed a motion for extension of time to file the answers. The parties and the trial court spent some time discussing, in detail, the documents that were filed with this Court with regard to the previous appeal to this Court and whether or not McCann should be given copies of documents including sexually explicit images. In resolving the outstanding discovery matters, the trial court stated that he wanted the parties to be "on an even playing field" for the ultimate disposition of the case. The trial court stated that he had "ordered

discovery, and I can't understand why I keep coming back time after time and this stuff is not being taken care of." The trial court ultimately stated:

> So here is what I'm going to do today:
>
> I want every admission responded to in group or otherwise. I don't care but in appropriate, legal form, and I want those on file. . . .
>
> . . . .
>
> But because I have made three sets of orders—or this is going to be my third set of orders about how discovery needs to be done, and it's not being done, I'm going to rewrite the rules for this case.
>
> I want your discovery on file with the clerk. I want copies of it given to him. I want the admissions answered in 30 days. I want the interrogatories answered within 30 days.
>
> And I'm going to tell you straight up, 30 days from now those interrogatories aren't responded to, you don't have the names of witnesses, they will not testify when we have this trial. I need the production that has—is appropriate to be produced.
>
> I'm not ordering you to produce items that were seized from him and taken away from him and are part of an exhibit that has been looked at by the Court of Appeals. That's not what I want, but if it's one of your policies, give him the policy.

This original proceeding ensued.[6] By one issue, relators contend that the trial court abused its discretion in ordering them to respond to McCann's "voluminous

[6] The record before this Court does not contain a written order pertaining to the trial court's deferral of its ruling on jurisdiction prior to the production of discovery responses. Mandamus may be utilized to review a trial court's failure to rule on a pending matter within a reasonable amount of time. *See In re Tex. Parks & Wildlife Dep't*, 483 S.W.3d 795, 797 (Tex. App.—El Paso 2016, no pet.); *In re Hearn*, 137 S.W.3d 681, 685 (Tex. App.—San Antonio 2004, orig. proceeding); *In re Chavez*, 62 S.W.3d 225, 228 (Tex. App.—Amarillo 2001, orig. proceeding). Further, mandamus may be based on an oral ruling. *See In re Nabors*, 276 S.W.3d 190, 192 n.3 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding); *In re Bill Heard Chevrolet, Ltd*., 209 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding); *In re Bledsoe*, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding). In order for mandamus review to be appropriate, the ruling must be clear, specific, enforceable, and adequately shown by the record. *In re State ex rel. Munk*, 448 S.W.3d 687, 690 (Tex. App.—Eastland 2014, orig. proceeding); *In re Bledsoe*, 41 S.W.3d at 811; *In re Perritt*, 973 S.W.2d 776, 779 (Tex. App.—Texarkana 1998, orig. proceeding).

discovery requests not [related] to jurisdictional facts" while their plea to the jurisdiction is pending. This Court requested and received a response to the petition for writ of mandamus from McCann. McCann contends that the trial court's September 27, 2016 docket control order, which contains discovery and other pre-trial deadlines, indicates that relators "agreed" to produce discovery before the discovery deadline of November 27, 2016.[7]

II. STANDARD OF REVIEW

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co., L.P.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex.1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co*., 450 S.W.3d 524, 528 (Tex. 2014) (orig.

[7] We note that the hand-written deadlines on the "form" docket control order are seemingly incorrect because all of the hand-written deadlines include the year "2017," and thus, according to the docket control order, the trial date of February 27, 2017 takes place before the deadlines for the completion of discovery, witness designation, challenges to expert testimony, and summary judgment. We assume for the purpose of this opinion that some of those dates are intended to be "2016."

proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

III. ANALYSIS

In general, "the scheduling of a hearing of a plea to the jurisdiction is left to the discretion of the trial court, which is in the best position to evaluate the appropriate time frame for hearing a plea in any particular case." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 229 (Tex. 2004); *see also Barnett v. City of Southside Place*, No. 01-16-00026-CV, 2017 WL 976067, at *5 (Tex. App.—Houston [1st Dist.] Mar. 14, 2017, no. pet.) (mem. op.). When a determination regarding the trial court's subject matter jurisdiction requires the examination of evidence, the trial court has discretion to decide whether the jurisdictional determination "should be made at a preliminary hearing or await a fuller development of the case, mindful that this determination must be made as soon as practicable." *Miranda*, 133 S.W.3d at 227; *see Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) ("[A] court deciding a plea to the jurisdiction is not required to look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues."). In this regard, it is clear that a trial court has broad discretion to schedule and define the scope of discovery. *See In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (orig. proceeding). Nevertheless, it is a "fundamental precept that a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided." *Miranda*, 133 S.W.3d at 228; *see W. Travis Cnty. Pub. Util. Agency v. CCNG Dev. Co.*, 514 S.W.3d 770, 776 (Tex. App.—

Austin 2017, no pet.) (op.).[8] In this regard, mandamus relief is available when a trial court litigates the merits of a case and delays ruling on a plea to the jurisdiction. *See City of Galveston v. Gray*, 93 S.W.3d 587, 591 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) (combined app. & orig. proceeding) ("The city and the county argue a governmental unit's entitlement to be free from suit is effectively lost if the trial court erroneously assumes jurisdiction and subjects the governmental unit to pre-trial discovery and the costs incident to litigation; therefore the trial court abuses its discretion and there is no adequate remedy at law."); *see also In re Hoa Hao Buddhist Congregational Church Tex. Chapter*, No. 01-14-00059-CV, 2014 WL 7335188, at *6 (Tex. App.—Houston [1st Dist.] Dec. 23, 2014, orig. proceeding) (mem. op.) ("We conclude that the trial court abused its discretion in requiring relators to comply fully with Huynh's discovery demands before determining the jurisdiction question raised in relators' motion for protective order and plea to the jurisdiction."); *In re First Mercury Ins. Co*., No. 13-13-00469-CV, 2013 WL 6056665, at *5 (Tex. App.—Corpus Christi Nov. 13, 2013, orig. proceeding) (mem. op.) ("There is nothing in the record before us suggesting that the jurisdictional determination sought by First Mercury's plea required the examination of further evidence or a fuller development of the case."); *In re Tex. Dep't of Ins*., No. 13–10–00471–CV, 2010 WL 3596844, at *2 (Tex. App.—Corpus Christi Sept.14, 2010, orig. proceeding) (per curiam mem. op.) (denying mandamus relief for the trial court's order granting a continuance of

[8] Similarly, a trial court is required to determine whether or not it has jurisdiction over a claim before allowing pre-suit discovery. *In re City of Dallas*, 501 S.W.3d 71, 74 (Tex. 2016) (orig. proceeding). ("Simply put, if the county court determines it does not have jurisdiction over Navarro's potential claim or anticipated action, it does not have jurisdiction over a Rule 202 proceeding seeking to investigate such claim or action.").

a hearing on a plea to the jurisdiction where the record failed to establish that the court had not set the hearing "as soon as practicable").[9]

The underlying case has been pending for more than three and a half years. Relators filed their initial motion to dismiss based on jurisdiction seven months ago and their amended motion to dismiss six months ago.[10] This case was previously set for trial. Relators have objected to further discovery prior to the trial court's ruling on their motion to dismiss on jurisdictional grounds. McCann's propounded discovery requests do not expressly address the issues of sovereign or official immunity or the trial court's jurisdiction over this cause. McCann does not contend that relators' responses to his discovery requests are necessary to determine factual issues pertaining to jurisdiction, and he does not explain how obtaining the requested information could help him overcome the relators' motion to dismiss on jurisdictional grounds. Further, McCann has not shown how the discovery he seeks would be material to the trial court's assessment

[9] On a similar issue, it is clear that trial courts act within their discretion in denying continuances of hearings on pleas to the jurisdiction based on a request for more discovery where the requested discovery does not impact the jurisdictional analysis in the case. *See, e.g., Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161–62 (Tex. 2004) (concluding that the trial court did not abuse its discretion in denying a motion for continuance for jurisdictional discovery when the discovery sought was not material to the issue of official immunity); *Quested v. City of Houston*, 440 S.W.3d 275, 282 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding that the trial court did not abuse its discretion in denying a continuance "based on purported need for jurisdictional discovery"); *Univ. of Tex. Health Sci. Ctr. at Houston v. McQueen*, 431 S.W.3d 750, 756–57 (Tex. App.—Houston [14th Dist.] 2014, no. pet.) (noting that an appellate court reviews a trial court's ruling on a plea to the jurisdiction as a matter of law when the "parties do not dispute the facts presented on the jurisdictional issue [but] simply dispute the legal significance of that evidence"); *Klumb v. Houston Mun. Employees Pension Sys.*, 405 S.W.3d 204, 227 (Tex. App.—Houston [1st Dist.] 2013), *aff'd*, 458 S.W.3d 1 (Tex. 2015) (concluding that the trial court did not abuse its discretion in denying a motion for continuance where "[n]one of the discovery mentioned by Plaintiffs could have raised a fact issue material to the determination of the jurisdictional plea").

[10] The Texas Supreme Court has explained that "regardless of whether immunity equates to a lack of subject-matter jurisdiction for all purposes, it implicates a court's subject-matter jurisdiction over pending claims." *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012). Further, "if a governmental entity validly asserts that it is immune from a pending claim, any court decision regarding that claim is advisory to the extent it addresses issues other than immunity, and the Texas Constitution does not afford courts jurisdiction to make advisory decisions or issue advisory opinions." *Id.*

of the relators' motion to dismiss. Finally, based on our review of the hearing transcripts, none of the trial court's concerns regarding the relators' responses to McCann's discovery requests pertain to factual matters regarding the merits of the relators' motion to dismiss. In short, there is nothing in the record before us suggesting that the jurisdictional determination sought by relators' motion to dismiss required the examination of further evidence or a fuller development of the case.

Under the circumstances presented here, we conclude that the trial court abused its discretion in requiring relators to fully respond to McCann's discovery requests before entertaining their motion to dismiss on jurisdictional grounds. *See City of Galveston*, 93 S.W.3d at 591; *see also In re Hoa Hao Buddhist Congregational Church Tex. Chapter*, 2014 WL 7335188, at *6; *In re First Mercury Ins. Co*., 2013 WL 6056665, at *5.[11]

IV. CONCLUSION

The Court, having examined and fully considered the petition for writ of mandamus, the response, and the applicable law, is of the opinion that relators have met their burden to obtain mandamus relief. Accordingly, we lift the stay previously imposed in this cause. *See* TEX. R. APP. P. 52.10(b) ("Unless vacated or modified, an order granting temporary

[11] In so holding, we acknowledge the trial court's frustration with this case insofar as the development of the case has been complicated by, inter alia, the previous appeal, the relators' representation during various times by different attorneys, and the problems inherent in having an incarcerated party appearing pro se. Moreover, based on the record presented, it appears that one of relators' counsel may have agreed to, or may have been ordered to produce, discovery in the past, and it appears that relators have volitionally produced some of the discovery at issue here. Nevertheless, it is well-established that a trial court's lack of subject-matter jurisdiction cannot be waived or established by estoppel. *See In re Crawford & Co*., 458 S.W.3d 920, 928, n.7 (Tex. 2015) (holding that party cannot waive complaint regarding trial court's lack of subject-matter jurisdiction); *Wilmer–Hutchins Indep. Sch. Dist. v. Sullivan*, 51 S.W.3d 293, 294 (Tex. 2001) ("As a general rule, a court cannot acquire subject-matter jurisdiction by estoppel."); *King v. Deutsche Bank Nat'l Trust Co*., 472 S.W.3d 848, 853 (Tex. App.—Houston [1st Dist.] 2015, no pet.) ("Subject-matter jurisdiction, which is at issue here, may be raised for the first time on appeal, and cannot be waived or conferred by consent, waiver, estoppel, or agreement."); *Glassman v. Goodfriend*, 347 S.W.3d 772, 783 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (stating that subject-matter jurisdiction cannot be conferred by consent or waiver).

relief is effective until the case is finally decided."). We grant McCann's motion to suspend Texas Rule of Appellate Procedure 9.3, and we dismiss his motion to reconsider our ruling on the motion for emergency stay as moot. We conditionally grant the writ of mandamus and direct the trial court to (1) vacate its orders requiring the relators to fully respond to all McCann's discovery requests, and (2) address the jurisdictional issue raised by relators. The trial court may, after appropriate notice and hearing, consider whether any of the pending discovery requests implicate jurisdictional issues, and if so, it may compel production as to those matters; however, the trial court should not further proceed on the merits of this matter until after the relators' challenge to jurisdiction has been determined. Our writ will issue only if the trial court fails to comply with these directives.

NELDA V. RODRIGUEZ
Justice

Delivered and filed the
21st day of June, 2017.