

**Reversed and Remanded and Memorandum Opinion and Memorandum
Concurring Opinion filed October 30, 2025.**



**In The
Fourteenth Court of Appeals**

NO. 14-24-00840-CV

**ALEXEY STANIN, NINA STANIN, AND ALEXEY STANIN AND NINA
STANIN AS NEXT FRIEND OF DIANA STANIN, MINOR, Appellants**

V.

**MARK MOORE AND MIDSTREAM TRANSPORTATION COMPANY,
LLC, Appellees**

**On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 2023-10759**

MEMORANDUM OPINION

Mark Moore was driving an 18-wheeler owned by Midstream Transportation Company, LLC when he allegedly rearended a family car. The family sued Moore and Midstream both, arguing that Moore was in the course and scope of his employment at the time of the accident. While those facts may not be unique, what happened next is: the family's lawyer died ten months after they filed suit, and the

trial court granted a no evidence summary judgment that the Defendants’ trial counsel had knowingly served only on their deceased attorney and then denied the family’s verified motion for continuance.¹ We reverse and remand.

BACKGROUND

Alexey and Nina Stanin, in their individual capacities and as next friend of their daughter, Diana Stanin, allege that Midstream’s employee Moore rearended their car while driving Midstream’s 18-wheeler, causing the mother, father, and minor child severe bodily injuries and damaging their vehicle. The Stanins also allege that Moore left the scene instead of waiting for the police after the accident.

The Stanins filed suit in February 2023, represented by Scott Ogle. Mr. Ogle died ten months later, in December 2023. The Defendants knew about his death as early as February 28, 2024, when they asked the trial court for a continuance of the scheduled trial because of his death, alleging that they were unable to find out who was taking over the case for the Stanins, discovery was not complete, and continuing the trial setting was “the only collegial, civilized, and reasonable thing to do” while the Stanins found a new lawyer. The trial court granted the Defendants’ motion for continuance, resetting the trial to February 2025 and ordering the parties to submit an agreed amended docket control order. The Defendants did not submit one and, unsurprisingly, neither did the Stanins.

Also on February 28, 2024, the Defendants filed a motion for no evidence summary judgment—individually listing 63 points on which the Stanins allegedly had no evidence. The Defendants’ trial counsel again acknowledged that the Stanins’ lawyer had died: “I have attempted to conduct a conference with Plaintiffs’

¹ The Stanins also sued two other entities but later nonsuited them, so they are not parties to this appeal. We refer to Midstream and Moore as “Defendants.”

counsel, but I have been informed that he is deceased. When I place calls to his office, there is no answer and the voice mail is full. When I have written to his office by email, I get no response. As best I know, Plaintiffs are not represented by counsel at this time.” Nonetheless, the certificate of service reflected that the Defendants served the no evidence motion on “all counsel of record.” They did not serve the Stanins as pro se plaintiffs or ask the trial court to intervene. Later that month, on March 21, 2024, the Defendants served a notice of hearing for the motion for summary judgment—again serving it on Mr. Ogle, even though they knew he had died. The hearing was set for August 6, 2024.

A new lawyer for the Stanins came onto the case sometime in the summer of 2024, although we do not know the precise date she was hired. She called the Defendants’ trial counsel to confer two weeks before the hearing and then filed her notice of appearance and verified motion for continuance of the summary judgment hearing on August 5, the day before the hearing. The Defendants opposed the motion for continuance, despite having previously asked themselves to continue the trial because of Mr. Ogle’s death. The trial court went forward with the hearing the next day. It granted the no evidence motion for summary judgment the same day as the hearing and denied the Stanins’ motion for continuance about a week later.

The Stanins moved for reconsideration and, alternatively, a new trial. The trial court denied the Stanins’ motion, and they appealed.

ANALYSIS

A party may move for a no evidence summary judgment “[a]fter adequate time for discovery.” Tex. R. Civ. P. 166a(i). Whether there has been an adequate time for discovery generally depends on “the nature of the claims, the evidence needed to controvert the motion, the length of time the case has been on file, and any deadlines set by the court.” *Carter v. MacFadyen*, 93 S.W.3d 307, 311 (Tex. App.—

Houston [14th Dist.] 2002, pet. denied). Those factors are not absolute, however; we review a trial court's determination on the adequacy of time for discovery for an abuse of discretion on a case-by-case basis. *McInnis v. Mallia*, 261 S.W.3d 197, 201 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (reversing denial of motion for continuance). Based on the unusual and troubling facts of this case, we agree with the Stanins that the trial court abused its discretion.

Texas Rule of Civil Procedure 166a(c) requires that a motion for summary judgment be served at least 21 days before a hearing on the motion. *See* Tex. R. Civ. P. 166a(c). Service must be on the party, the party's agent, or the party's attorney of record. Tex. R. Civ. P. 21a. We have not found any case directly on point, but we think it elementary that service on a party's attorney of record doesn't count if that attorney has died—or at least if opposing counsel knows he has died, as here.² Once the Stanins' lawyer died, they were pro se, and service should have been made on them. The rules even provide a mechanism for petitioning the trial court for help if opposing counsel suddenly stops practicing and there is cause to believe that a client's interests will be prejudiced, as here. *See* Tex. R. Disc. P. 13.02. Instead, the Defendants pressed forward with a no evidence summary judgment motion that they purported to serve on “all counsel of record” even while recognizing that “Plaintiffs are not represented by counsel at this time.”

A nonmovant who needs more time for discovery in the face of a summary judgment motion must file either an affidavit or a verified motion for continuance explaining that need. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161

² The Defendants point to evidence that someone from Mr. Ogle's office opened the service email. But whoever opened the service email was neither the Stanins nor their attorney of record. *See Tripp v. Santa Rosa St. R. Co.*, 144 U.S. 126, 128 (1892) (“Service may be had upon his attorney or counsel with like effect as upon the party himself, but, when counsel of record is dead, it cannot be served on his personal representative, nor even on his partner, if not regularly appearing on the record as counsel in the cause.”).

(Tex. 2004); *see* Tex. R. Civ. P. 166a(g). That is exactly what the Stanins did: their verified motion for continuance explained that Mr. Ogle had suddenly passed away in December 2023 and their new lawyer “took over this case” in June 2024, after the summary judgment was already set for hearing. The motion asked the trial court to continue the current summary judgment hearing and enter a new docket control order “for the purpose of allowing Plaintiffs to serve written discovery to the Defendants as well as obtaining necessary depositions, and vice versa.”³

Knowing that he had served the Defendants’ no evidence motion on an attorney who had died, the Defendants’ trial counsel nonetheless failed to agree to reschedule the summary judgment hearing when the Stanins’ new lawyer called him to confer two weeks before the hearing, and then opposed the motion for continuance when he spoke to the Stanins’ new lawyer a week before the hearing.

At the hearing, the Stanins’ new lawyer further explained the need for discovery. The file “wasn’t in [her] office in [her] hands until last week or the week before,” she said. She also explained that neither she nor her firm was “authorized to take over this file and file a notice of appearance” until six days before the hearing. This evidence—and, indeed, it was evidence, *Banda v. Garcia*, 955 S.W.2d 270, 272 (Tex. 1997) (per curiam)⁴—supported the Stanins’ argument that they did not have adequate time for discovery after their new lawyer was hired and before the hearing. Indeed, regardless of whether she was hired sometime in June 2024 or late July 2024, the Stanins did not have adequate time for discovery.

³ Mr. Ogle’s death distinguishes this case from *Carter*, 93 S.W.3d at 311, in which we held that the trial court had not abused its discretion in denying a continuance because the party gave no reason for failing to conduct any discovery in the eight months before he hired a lawyer.

⁴ An attorney’s unsworn statements to the trial court constitute some evidence when the opposing counsel does not object, as here. *Banda*, 955 S.W.2d at 272; *see also Mathis v. Lockwood*, 166 S.W.3d 743, 745 (Tex. 2005) (per curiam) (considering an attorney’s statements as evidence of notice).

The trial court did not even consider the Stanins' motion for continuance until it was too late, however. The Stanins' lawyer asked the court to consider it before the motion for summary judgment, but the court refused because the Defendants had not received three days' notice to respond, as required by the local rules. The Defendants' lawyer was ready to respond, however—as he already had spoken to the Stanins' lawyer twice the month before—and, in fact, the trial court let him argue his opposition to the continuance. The trial court then granted summary judgment the same day as the hearing and denied the continuance a week later, when it was moot, without receiving evidence or a written response from the Defendants. A trial court is vested with broad discretion in deciding motions for continuance, but we think this is a bridge too far.

Nor are we persuaded by the Defendants' claim that the Stanins did not need more time because they could have overcome the no evidence motion with “a simple declaration.” Such an argument is incredulous considering the Defendants' lengthy motion, in which they argued there were 63 points on which the Stanins had no evidence. For example, a declaration by the Stanins cannot refute that Moore was in the course and scope of employment at the time of the accident, violated the Texas Transportation Code without legal excuse, and proximately caused the accident.

We are likewise not persuaded that Mr. Ogle had adequate time for discovery prior to his death. This case was filed in February 2023 against three named defendants and the driver of the truck, who was unknown and therefore listed as John Doe. The parties agreed to extend the answer date for all Defendants because there was “some mistake as to who should be a Defendant and who should not,” and then the Stanins added Moore to their second amended petition in April 2023. The last defendant did not answer until June 2023. The trial court entered its docket control order three months after suit was filed, in May 2023, setting a March 2024

deadline for discovery and a January 2024 deadline for no evidence motions for summary judgment. Mr. Ogle’s death in December 2023 was months before the discovery and summary judgment deadlines, cutting off the time when most parties conduct discovery in anticipation of a summary judgment motion. And the Stanins did not have a lawyer until, at best, June 2024, possibly because they did not know Mr. Ogle had died or because they needed time to find a new attorney to take their case. Either way, there was not a sustained period in which the Stanins could have conducted discovery to defeat a 63-point no evidence summary judgment motion.

The Defendants may very well show on remand that they are entitled to a no evidence motion for summary judgment. But they are not entitled to one when the motion and hearing notice were both knowingly served on a dead attorney, leaving the plaintiffs without adequate time for discovery. *Cf. Specialty Retailers, Inc. v. Fuqua*, 29 S.W.3d 140, 145 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Considering the particular facts in this case, we conclude the trial court abused its discretion when it denied the Stanins’ motion for continuance and prematurely granted judgment against the Stanins.⁵

⁵ We have previously held that a nonmovant waived its complaint about the 21-day notice requirement for a summary judgment motion when it received notice of the hearing, appeared at the hearing, filed no controverting affidavit, and did not file a motion for continuance. *See Emmanuel v. Izoukumor*, 611 S.W.3d 453, 456-57 (Tex. App.—Houston [14th Dist.] 2020, no pet.). In sum, the nonmovant had never raised its complaint to the trial court. But that case does not dictate the result here for two reasons. First, our holding is based on the Stanins having an inadequate time for discovery, and the trial court was well apprised of this complaint through the verified motion for continuance and the hearing. Second, the Stanins’ motion for continuance informed the trial court that they needed additional time for discovery because of their lawyer’s death. Although they did not file a separate affidavit, their motion was verified—the functional equivalent of an affidavit. We hold that their complaint was timely made to the trial court with sufficient specificity. *See* Tex. R. App. P. 33.1(a)(1) (“As a prerequisite to presenting a complaint for appellate review, the record must show that . . . the complaint was made to the trial court . . .”).

CONCLUSION

We reverse the trial court's judgment and remand this case for further proceedings consistent with this court's opinion.

/s/ Katy Boatman
Justice

Panel consists of Justices Bridges, Boatman, and Antú. (Boatman, J., Concurring Memorandum Opinion).