

TEXAS COURT OF APPEALS, FOURTH DISTRICT, SAN ANTONIO

Jesus Virlar, M.D., and Gonzaba Medical Group A/K/A GMG Health Systems Associates, P.A. A/K/A GMG Health Systems P.A. v. Maria Esther Carr, as Independent Administrator and Personal Representative of the Estate of Jo Ann Puente, Deceased

No. 04-24-00551-CV · No. No. 04-24-00551-CV · Decided April 30, 2026

SUMMARY

The Fourth Court of Appeals of San Antonio considers an appeal from a judgment on remand in a medical-malpractice action involving Dr. Jesus Virlar and Gonzaba Medical Group. The court holds that the trial court properly addressed the Texas Supreme Court’s remand instructions but included an excessive lump-sum award, primarily because certain interim medical expenses were not discounted to present value and the lump-sum components contained a calculation discrepancy. The court suggests a \$533,038.51 remittitur and explains that the judgment will otherwise be reversed and remanded if the remittitur is not timely filed.

CASE DETAILS

COURT	Texas Court of Appeals, Fourth District, San Antonio
WRITING FOR THE COURT	Lori Massey Brissette, Justice; Lori I. Valenzuela, Justice; H. Todd McCray, Justice
JURISDICTION	Fourth Court of Appeals, San Antonio, Texas
DECIDED	April 30, 2026
DOCKET	No. 04-24-00551-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a judgment entered on remand from the Texas Supreme Court in a medical-malpractice action. Appellants challenged the remand judgment's estate-representation procedure, lump-sum and periodic-payment calculations, treatment of post-death medical expenses, postjudgment interest, factual findings, and judicial notice.
STANDARD OF REVIEW	Abuse of discretion for the trial court's structuring of lump-sum and periodic payments; sufficiency-of-the-evidence review for litigation expenses and factual findings; errors in judicial notice reviewed for whether they probably caused rendition of an improper judgment.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Jesus Virilar, M.D., Gonzaba Medical Group a/k/a GMG Health Systems Associates, P.A. a/k/a GMG Health Systems P.A. v. Maria Esther Carr, as Independent Administrator and Personal Representative of the Estate of Jo Ann Puente, Deceased

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QUESTIONS PRESENTED

1. Whether the appeal should be abated or the remand judgment declared void because Puente's estate representative was not formally substituted in the trial court.
2. Whether the trial court awarded an excessive lump-sum recovery by miscalculating interim medical expenses, attorney's fees, and litigation expenses and costs.
3. Whether the trial court improperly awarded future medical expenses projected after Puente's death.
4. Whether the trial court's future-medical-expense calculations were inconsistent with the jury's verdict.
5. Whether postjudgment interest accrued from the original judgment or the judgment on remand.
6. Whether the trial court's amended findings were supported by factually sufficient evidence.
7. Whether the trial court improperly took judicial notice of facts concerning Dr. Virilar's medical license.

HOLDINGS

1. Abatement was unnecessary, and the remand judgment was not void because Carr appeared and participated as the estate's independent administrator and personal representative.
2. The trial court abused its discretion by including an excessive lump-sum amount, but the error could be cured by remittitur.
3. The remand judgment did not improperly award recovery for future medical expenses after Puente's death.
4. The trial court's periodic-payment structure for 2019 and 2020 was not inconsistent with the jury's verdict.
5. Postjudgment interest accrued from the date of the original judgment, not the date of the judgment on remand.
6. The amended findings were supported by factually sufficient evidence.
7. Any error in taking judicial notice of later facts concerning Dr. Virilar's medical license did not warrant reversal.

KEY QUOTATIONS

“If within twenty days of the date of this opinion, appellee files in this court a remittitur of \$533,038.51, we will modify the trial court’s judgment in accordance with this opinion and affirm the judgment as modified.” (at 5)

“the trial court is authorized to take all actions that are necessary to give full effect to the appellate court’s judgment and mandate.” (at 6)

“Periodic payments, other than future loss of earnings, terminate on the death of the recipient.” (at 21)

“the date the trial court entered the original judgment is the ‘date the judgment is rendered,’ and postjudgment interest began to accrue and must be calculated as of that date.” (at 26)

“Because the lump sum total in the remand judgment was excessive by \$533,038.51, and we find no additional reversible error, we suggest a remittitur of \$533,038.51.” (at 30)

FACTUAL BACKGROUND

Jo Ann Puente developed serious complications after Roux-en-Y gastric-bypass surgery and was treated in an intensive-care unit. While treating Puente, Dr. Jesus Virilar allegedly failed to review nursing notes documenting symptoms consistent with thiamine deficiency and failed to order thiamine supplements; expert testimony connected that failure to Wernicke's disease and Korsakoff's syndrome. A jury found Dr. Virilar negligent, assigned him 60% responsibility, and awarded damages for past earnings, future earning capacity, and future medical expenses. Puente later died while the original appeal was pending.

PROCEDURAL HISTORY

The trial court entered judgment for Puente against Dr. Virilar and Gonzaba after a jury found Dr. Virilar negligent and allocated him 60% responsibility. The court of appeals initially affirmed most of the judgment, but the Texas Supreme Court later required a dollar-for-dollar settlement credit and at least partial periodic payments for future medical expenses, remanding for a proper damages judgment. On remand, the trial court entered a revised judgment, and appellants timely appealed. The court of appeals concluded that the lump-sum allocation was excessive but curable by remittitur.

DISPOSITION

other

REMAND INSTRUCTIONS

The court suggested a remittitur of \$533,038.51. If appellee files the remittitur within twenty days, the court will modify the trial court's judgment accordingly and affirm it as modified. If appellee does not timely file the remittitur, the trial court's judgment will be reversed and the case remanded for entry of a proper judgment consistent with the opinion.

CASES CITED

- Phillips v. Bramlett, 407 S.W.3d 229, 234, 241, 243 (Tex. 2013)
- Nederlandsch-Amerikaansche-Stoomvaart-Maatschappij; Holland-Am. Line v. Vassallo, 365 S.W.2d 650, 656 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.)
- Exito Elec. Co. v. Trejo, 142 S.W.3d 302, 304 (Tex. 2004)
- Gantt v. Harris County, 674 S.W.3d 553, 556-58 (Tex. App.—Houston [1st Dist.] 2023, no pet.)
- Smith v. Kingdom Investments, Ltd., No. 14-20-00447-CV, 2022 WL 3725070, at *1 (Tex. App.—Houston [14th Dist.] Aug. 30, 2022, pet. denied)
- Tolar v. Tolar, No. 12-14-00228-CV, 2015 WL 2393993, at *1-2 (Tex. App.—Tyler May 20, 2015, no pet.)
- Austin Nursing Ctr., Inc. v. Lovato, 171 S.W.3d 845, 849 (Tex. 2005)
- Belt v. Oppenheimer, Blend, Harrison & Tate, Inc., 192 S.W.3d 780, 786 (Tex. 2006)
- Delgado v. Garza, 2018 WL 6187077, at *5 (Tex. App.—Corpus Christi-Edinburg 2018, no pet.)
- Charles v. Estate of Kornbacher, No. 01-23-00125-CV, 2024 WL 1862852, at *4 (Tex. App.—Houston [1st Dist.] Apr. 30, 2024, pet. denied)
- Rangel v. Robinson, No. 01-05-00318-CV, 2007 WL 625042, at *2 (Tex. App.—Houston [1st Dist.] Mar. 1, 2007, pet. denied)
- Morrell v. Finke, 184 S.W.3d 257, 289 (Tex. App.—Fort Worth 2005, pet. denied)
- Cincinnati Ins. Co. v. Villanueva, No. 04-20-00389-CV, 2022 WL 608962, at *7 (Tex. App.—San Antonio Mar. 2, 2022, pet. denied)
- Regent Care of San Antonio, L.P. v. Detrick, 610 S.W.3d 830, 834, 837-38 (Tex. 2020)
- Battaglia v. Alexander, 177 S.W.3d 893, 908 (Tex. 2005)
- Bright & Co. v. Holbein Family Mineral Tr., 995 S.W.2d 742, 748 (Tex. App.—San Antonio 1999, pet. denied)
- Cleveland v. Taylor, 397 S.W.3d 683, 701 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)
- In re Estate of Vrana, 335 S.W.3d 322, 329 (Tex. App.—San Antonio 2010, pet. denied)
- Guyton v. Monteau, 332 S.W.3d 687, 693 (Tex. App.—Houston [14th Dist.] 2011, no pet.)
- Davis v. State, 293 S.W.3d 794, 799 (Tex. App.—Waco 2009, no pet.)
- In re Estate of Downing, 461 S.W.3d 231, 240 (Tex. App.—El Paso 2015, no pet.)
- Advanced Tech. Transfer & Intellectual Prop. Group LLC v. Krenek, 627 S.W.3d 540, 547 (Tex. App.—Houston [14th Dist.] 2021, no pet.)
- Critical Path Res., Inc. v. Cuevas, 561 S.W.3d 523, 535 (Tex. App.—Houston [14th Dist.] 2018), supplemented, 582 S.W.3d 348 (Tex. App.—Houston [14th Dist.] 2018, no pet.)
- THB Construction, LLC v. Holt Texas, Ltd., No. 05-20-00020-CV, 2022 WL 123105, at *7 (Tex. App.—Dallas Jan. 13, 2022), judgment set aside, opinion not vacated, 2022 WL 336559 (Tex. App.—Dallas Feb. 4, 2022, no pet.)

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