

COURT OF APPEALS OF TEXAS, FORT WORTH

In re Mary Richardson

327 S.W.3d 848 (Tex. App.—Fort Worth 2010) · No. No. 02-10-00337-CV · Decided November 2, 2010

SUMMARY

The Texas Court of Appeals for the Second District conditionally granted Mary Richardson’s petition for writ of mandamus. The court held that the trial court abused its discretion by dismissing a claim that the appellate court had previously determined was supported by an adequate expert report, thereby failing to comply with the appellate mandate. The writ would issue only if the trial court failed to vacate the dismissal as to Richardson’s claim for prolonged pain and disability.

CASE DETAILS

COURT	Court of Appeals of Texas, Fort Worth
WRITING FOR THE COURT	Sue Walker, Justice; Livingston, C.J.; Dauphinot, J.; Walker, J.
JURISDICTION	Texas
DECIDED	November 2, 2010
DOCKET	No. 02-10-00337-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding challenging the trial court's order dismissing all of Richardson's health care liability claims after the court of appeals had previously held that her expert report was adequate as to one causation theory.
STANDARD OF REVIEW	Mandamus relief requires a clear abuse of discretion and the absence of an adequate remedy by appeal. A trial court has no discretion to review or reinterpret an appellate mandate and has a mandatory, ministerial duty to enforce it.
PRECEDENTIAL VALUE	published opinion
PARTIES	Mary Richardson, Relator v. Daniel L. Foster, D.O., Real Party in Interest

TOPICS

- appellate procedure
- appellate jurisdiction
- motions to dismiss
- health law
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

health law

remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Richardson's claim for prolonged pain and disability despite the court of appeals' prior determination that her expert report was adequate as to that claim.
2. Whether Richardson had an adequate remedy by interlocutory appeal that precluded mandamus relief.

HOLDINGS

1. The trial court abused its discretion by dismissing Richardson's claim for prolonged pain and disability because the dismissal failed to carry out the court of appeals' mandate affirming the denial of Foster's motion to dismiss as to that claim and interfered with the appellate court's prior judgment.
2. Richardson did not have an adequate remedy by law because she was not required to pursue a second interlocutory appeal to obtain relief already granted in the prior interlocutory appeal.

KEY QUOTATIONS

"Upon receiving the appellate court's mandate, the lower court has a mandatory, ministerial duty to enforce the appellate court's judgment." (850-51)

"The lower court has no discretion to review or interpret the mandate but, instead, must carry out the mandate." (851)

"Richardson is not required to perfect a second interlocutory appeal in order to require the trial court to give effect to our judgment and mandate in Foster." (851)

FACTUAL BACKGROUND

Richardson asserted a health care liability claim against Dr. Foster based on his alleged misdiagnosis of her ankle fracture. The court of appeals previously held that her expert report adequately addressed causation for an approximately one-month period of prolonged pain and disability, but was inadequate as to whether the misdiagnosis caused the need for ankle surgeries or other surgery-related conditions. After remand, Richardson pursued only the adequately supported pain-and-disability claim, but the trial court dismissed all of her claims because she had not filed an amended expert report.

PROCEDURAL HISTORY

In a prior interlocutory appeal, the court of appeals affirmed the denial of Dr. Foster's motion to dismiss as to Richardson's claim for prolonged pain and disability caused by an alleged misdiagnosis, but reversed and remanded as to claims concerning the need for ankle surgery and related harmful conditions. After remand, Richardson elected not to file an amended expert report and proceeded only on the claim the appellate court had found adequately supported. The trial court nevertheless granted Foster's second motion to dismiss all claims. Richardson sought mandamus, and the court conditionally granted relief.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to vacate its August 30, 2010 order granting Foster's second motion to dismiss to the extent that it dismissed Richardson's claim for prolonged pain and disability attributable to the alleged misdiagnosis. The writ would issue only if the trial court failed to comply with the opinion.

CASES CITED

- Foster v. Richardson, 303 S.W.3d 833 (Tex. App.—Fort Worth 2009, no pet.)
- In re Marriage of Grossnickle, 115 S.W.3d 238, 243 (Tex. App.—Texarkana 2003, no pet.)
- In re Columbia Med. Ctr. of Las Colinas, 306 S.W.3d 246, 248 (Tex. 2010) (orig. proceeding)
- In re Johnson, 961 S.W.2d 478, 481 (Tex. App.—Corpus Christi 1997, orig. proceeding)
- Upjohn Co. v. Marshall, 843 S.W.2d 203, 204-05 (Tex. App.—Dallas 1992, orig. proceeding)
- In re Masonite Corp., 997 S.W.2d 194, 198 (Tex. 1999) (orig. proceeding)
- Otero v. Richardson, 326 S.W.3d 363 (Tex. App.—Fort Worth 2010, no pet. h.)