

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

North Cypress Medical Center Operating Company, Ltd., D/B/A
North Cypress Medical Center and Dr. Ozochukwu Odili v. Randy
White

No. 14-20-00004-CV · No. No. 14-20-00004-CV · Decided January 13, 2022

SUMMARY

The Texas Fourteenth Court of Appeals affirmed the denial of motions to dismiss Randy White’s health-care liability claims against North Cypress Medical Center and Dr. Ozochukwu Odili. The court held that the expert report was timely, implicated Dr. Odili’s conduct, and was authored by a qualified expert, and that the amended report adequately addressed standard of care, breach, and proximate causation. The court also concluded that it lacked jurisdiction to review the trial court’s order granting a 30-day opportunity to cure deficiencies.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Margaret "Meg" Poissant; Chief Justice Christopher; Justice Jewell; Justice Poissant
JURISDICTION	Texas
DECIDED	January 13, 2022
DOCKET	No. 14-20-00004-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of appellants' motions to dismiss health-care liability claims for failure to serve an adequate expert report under the Texas Medical Liability Act.
STANDARD OF REVIEW	Abuse of discretion for the trial court's rulings on the sufficiency of the expert report, motions to dismiss under Texas Civil Practice and Remedies Code section 74.351, and expert qualifications.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is not expressly addressed in the opinion text.
PARTIES	North Cypress Medical Center Operating Company, Ltd., D/B/A North Cypress Medical Center, Dr. Ozochukwu Odili v. Randy White

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether White's original expert report qualified as an expert report under the Texas Medical Liability Act despite challenges to the expert's qualifications and the report's treatment of standard of care, breach, and causation.
2. Whether the trial court's grant of a thirty-day extension to cure deficiencies in the original expert report was reviewable on interlocutory appeal.
3. Whether White's amended expert report adequately addressed proximate causation as to Dr. Odili.
4. Whether the amended expert report adequately implicated North Cypress's conduct through White's vicarious-liability theory, even if it did not separately address every direct-liability theory against the Hospital.

HOLDINGS

1. The original report was an expert report because it was timely served, contained the opinions of a qualified expert, and implicated Dr. Odili's conduct. Alleged deficiencies concerning the standard of care, breach, and causation went to the report's adequacy, not whether it was a report at all.
2. The court lacked jurisdiction to review the trial court's order granting White thirty days to cure deficiencies in the original expert report.
3. The amended report represented a good-faith effort to explain proximate causation and was adequate to support White's claims against Dr. Odili.
4. Because the amended report adequately implicated Dr. Odili, a Hospital physician, it was sufficient to implicate North Cypress under White's vicarious-liability theory, and the entire case against the Hospital could proceed.

KEY QUOTATIONS

“The goal is “to deter frivolous lawsuits by requiring a claimant early in litigation to produce the opinion of a suitable expert that his claim has merit.”” (at 5)

““[A] 30-day extension to cure deficiencies in an expert report may be granted if the report is served by the statutory deadline, if it contains the opinion of an individual with expertise that the claim has merit, and if the defendant’s conduct is implicated.”” (at 11)

“An expert report under the TMLA must explain both foreseeability and cause-in-fact.” (at 12)

“And if any liability theory has been adequately covered, the entire case may proceed.” (at 16)

FACTUAL BACKGROUND

On March 11, 2017, Randy White was treated at North Cypress after a toolbox caused a six-centimeter thumb laceration and an open intra-articular fracture. Dr. Odili treated White and referred him for orthopedic consultation several days later rather than arranging immediate consultation or surgery. During surgery on March 16, 2017, the wound was found to be infected; White then underwent multiple incision-and-drainage procedures and later received a nine-percent impairment rating. White alleged that the delay in obtaining hand-specialist care caused infection, permanent thumb impairment, and other complications.

PROCEDURAL HISTORY

White sued Dr. Odili and North Cypress for negligence, gross negligence, and related vicarious-liability theories arising from treatment of an open thumb fracture. After appellants objected to White's original expert report, the trial court granted White a thirty-day extension to cure deficiencies. White served an amended report, and the trial court denied appellants' renewed objections and motions to dismiss. Appellants brought an interlocutory appeal under Texas Civil Practice and Remedies Code section 51.014(a)(9). The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Baty v. Futrell, 543 S.W.3d 689, 692 n.1 (Tex. 2018)
- Columbia Valley Healthcare System, L.P. v. Zamarripa, 526 S.W.3d 453, 460-61 (Tex. 2017)
- Scoresby v. Santillan, 346 S.W.3d 546, 552, 556-57 (Tex. 2011)
- Abshire v. Christus Health Southeast Texas, 563 S.W.3d 219, 223-25 (Tex. 2018) (per curiam)
- Loaisiga v. Cerda, 379 S.W.3d 248, 264 (Tex. 2012)
- Miller v. JSC Lake Highland Operations, LP, 536 S.W.3d 510, 512-15 (Tex. 2017) (per curiam)
- Bowie Memorial Hospital v. Wright, 79 S.W.3d 48, 52-53 (Tex. 2002) (per curiam)
- Jelinek v. Casas, 328 S.W.3d 526, 539-40 (Tex. 2010)
- American Transitional Care Centers of Texas, Inc. v. Palacios, 46 S.W.3d 873, 879 (Tex. 2001)
- TTHR Ltd. Partnership v. Moreno, 401 S.W.3d 41, 44 (Tex. 2013)
- Certified EMS, Inc. v. Potts, 392 S.W.3d 625, 632 (Tex. 2013)
- New Medical Horizons, II, Ltd. v. Milner, 575 S.W.3d 53, 60 (Tex. App.—Houston [1st Dist.] 2019, no pet.)
- Rosemond v. Al-Lahiq, 362 S.W.3d 830, 833-34 (Tex. App.—Houston [14th Dist.] 2012, pet. denied)
- Larson v. Downing, 197 S.W.3d 303, 304-05 (Tex. 2006) (per curiam)
- Crawford v. XTO Energy, Inc., 509 S.W.3d 906, 911 (Tex. 2017)
- Memorial Hermann Health System v. Heinzen, 584 S.W.3d 902, 916-17 (Tex. App.—Houston [14th Dist.] 2019, no pet.)
- Blan v. Ali, 7 S.W.3d 741, 746 (Tex. App.—Houston [14th Dist.] 1999, no pet.)

- Memorial Hermann Healthcare System v. Burrell, 230 S.W.3d 755, 758 (Tex. App.—Houston [14th Dist.] 2007, no pet.)
- Roberts v. Williamson, 111 S.W.3d 113, 121-22 (Tex. 2003)
- Ogletree v. Matthews, 262 S.W.3d 316, 319-22 (Tex. 2007)
- Price v. Divita, 224 S.W.3d 331, 336 (Tex. App.—Houston [1st Dist.] 2006, pet. denied)
- Doe v. Boys Clubs of Greater Dallas, Inc., 907 S.W.2d 472, 478 (Tex. 1995)
- Humble Surgical Hospital, LLC v. Davis, 542 S.W.3d 12, 23-26 (Tex. App.—Houston [14th Dist.] 2017, pet. denied)
- Harvey v. Kindred Healthcare Operating, Inc., 578 S.W.3d 638, 653-54 (Tex. App.—Houston [14th Dist.] 2019, no pet.)
- Gonzalez v. Padilla, 485 S.W.3d 236, 252-53 (Tex. App.—El Paso 2016, no pet.)
- Gardner v. U.S. Imaging, Inc., 274 S.W.3d 669, 671-72 (Tex. 2008) (per curiam)
- Methodist Hospital v. Addison, 574 S.W.3d 490, 502 (Tex. App.—Houston [14th Dist.] 2018, no pet.)
- Houston Methodist Hospital v. Nguyen, 470 S.W.3d 127, 130 (Tex. App.—Houston [1st Dist.] 2015, pet. denied)
- McAllen Hospitals, L.P. v. Gonzalez, 566 S.W.3d 451, 458 (Tex. App.—Corpus Christi-Edinburg 2018, no pet.)

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