

SUPREME COURT OF TEXAS

Rio Grande Valley Vein Clinic, P.A., D/B/A RGV Vein Laser & Aesthetic Clinic v. Yvette Guerrero

431 S.W.3d 64 (Tex. 2014) · No. No. 12-0843 · Decided April 25, 2014

SUMMARY

The Supreme Court of Texas held that a claim arising from allegedly improper laser hair removal was a health care liability claim under the Texas Medical Liability Act. Because the claimant failed to serve the required expert report, the Court reversed the court of appeals' judgment and remanded for the trial court to consider dismissal and the healthcare provider's request for attorney's fees and costs.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	April 25, 2014
DOCKET	No. 12-0843
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from denial of a motion to dismiss a health care liability claim for failure to serve an expert report under the Texas Medical Liability Act.
STANDARD OF REVIEW	The court reviewed the legal issue of whether the claim was a health care liability claim and whether dismissal was required for failure to serve an expert report.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential.
PARTIES	Rio Grande Valley Vein Clinic, P.A., D/B/A RGV Vein Laser & Aesthetic Clinic v. Yvette Guerrero

TOPICS

[health law](#)[medical malpractice](#)[standard of care](#)[interlocutory appeal](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Guerrero's claim for injuries allegedly caused by improper laser hair removal was a health care liability claim under the Texas Medical Liability Act.
2. Whether the presumption that the claim was a health care liability claim was rebutted because the procedure allegedly was performed by a nurse rather than a physician.
3. Whether Guerrero's failure to serve an expert report required dismissal of the claim.

HOLDINGS

1. A claim alleging improper laser hair removal is a health care liability claim when it is asserted against a health care provider and concerns treatment involving a regulated surgical laser for which expert health care testimony is necessary to prove or refute a departure from accepted standards of health care.
2. The absence of a direct physician-patient interaction does not prevent the existence of a physician-patient relationship for purposes of determining whether a claim is a health care liability claim, and the clinic's status as a professional association independently satisfied the statutory physician requirement.
3. Because Guerrero's claim was a health care liability claim and she failed to serve the required expert report within the statutory period, dismissal was required.

KEY QUOTATIONS

“Under the Medical Liability Act, a health care liability claim must satisfy three elements:” (at 65)

“Because the RGV Clinic’s laser is a regulated surgical device that may only be acquired by a licensed medical practitioner for supervised use in her medical practice, the testimony of a licensed medical practitioner is required to prove or refute Guerrero’s claim that use of the device departed from accepted standards of health care.” (at 67)

“Accordingly, pursuant to Texas Rule of Appellate Procedure 59.1, we grant the petition for review and, without hearing oral argument, reverse the court of appeals’ judgment and remand to the trial court to consider the RGV Clinic’s request for attorney’s fees and costs.” (at 69)

FACTUAL BACKGROUND

Yvette Guerrero alleged that she suffered burns and scarring to her face, chin, and neck while receiving laser hair removal treatments from the RGV Clinic in October 2008. She completed medical-history, informed-consent, and medical-information-disclosure forms, indicating that she was a patient receiving care or treatment. The laser used was a federally regulated Class II surgical device restricted to supervised use by a licensed medical professional.

PROCEDURAL HISTORY

Guerrero sued the RGV Clinic for negligence after allegedly suffering burns and scarring during laser hair removal treatments. The clinic moved to dismiss after Guerrero failed to serve an expert report within the

statutory period; the trial court denied the motion, and a divided court of appeals affirmed. The Supreme Court of Texas granted review, reversed the court of appeals, and remanded for the trial court to consider the clinic's request for attorney's fees and costs and to dismiss the claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court to dismiss the claim and consider the RGV Clinic's request for attorney's fees and costs.

CASES CITED

- Bioderm Skin Care, LLC v. Sok, __ S.W.3d __, __ (Tex. 2014)
- Tex. W. Oaks Hosp., LP v. Williams, 371 S.W.3d 171, 179-80, 182-83 (Tex. 2012)
- Loaisiga v. Cerda, 379 S.W.3d 248, 252 (Tex. 2012)