Opinion issued August 17, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00957-CV

DR. MAHTA ROUHANI AND DR. ADRIENNE LEGENDRE, Appellants

V.

DIONDRIA MORGAN, INDIVIDUALLY AND AS NEXT FRIEND OF M.J.M., A MINOR, Appellee

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On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2015-73060

MEMORANDUM OPINION

Appellants, Mahta Rouhani, MD, and Adrienne Legendre, MD, are resident physicians who cared for appellee, Diondria Morgan, during her labor and the subsequent birth of her son, M.J.M. Morgan asserted health care liability claims against Rouhani, Legendre, and several other defendants and filed an expert report.

Rouhani and Legendre moved to dismiss her claims, asserting that the expert report was inadequate. The trial court denied the motion to dismiss.

In two issues, Rouhani and Legendre argue that: (1) Morgan's expert report failed to establish causation because it "admits that [their] care ended before any injury became foreseeable and/or necessary action (expeditious delivery) should have occurred"; and (2) the report and attached curriculum vitae failed to establish the expert's qualifications to opine on "the specific issue of the timing of hypoxic brain injuries." We hold that the trial court reasonably could have concluded that the expert report met the requirements of Civil Practice and Remedies Code section 74.351(r)(6) in setting out specific conduct that breached the relevant standard of care and was a proximate cause of M.J.M.'s injuries. We further hold that the trial court reasonably could have concluded that the expert's report and curriculum vitae established that he was qualified to opine on the relevant medical issues. Therefore, because the trial court did not abuse its discretion, we affirm the denial of the motion to dismiss.

Background

On November 4, 2014, Morgan, who was forty weeks pregnant with M.J.M., was admitted to St. Joseph Medical Center after being diagnosed with a decrease in amniotic fluid in order for labor to be induced. Pitocin was administered to Morgan to aid in the induction of her labor, and M.J.M.'s heart rate was monitored using

fetal heart rate tracings. Thirty-six hours later, after additional diagnoses of gestational hypertension, preeclampsia, and intraamniotic infection, and multiple fetal heart rate tracings showing that M.J.M. was in distress, Dr. Priti Schachel, the attending physician, delivered M.J.M., who suffered from a brain injury known as hypoxic ischemic encephalopathy ("HIE"). Morgan and M.J.M. were cared for by numerous medical personnel during the period between when Morgan's labor was induced and M.J.M.'s birth.

Morgan ultimately filed suit against the hospital and her doctors, including Rouhani and Legendre.[1] She also filed and served an expert report by Howard C. Mandel, MD, which she amended twice within the 120-day deadline. Rouhani and Legendre moved to dismiss Morgan's claims against them, asserting that the expert report was insufficient. The trial court agreed that the expert report was insufficient and granted Morgan a thirty-day extension to amend the report. Morgan timely filed Mandel's amended expert report.

In his amended report, Mandel set out his qualifications as an expert, and he attached a copy of his curriculum vitae detailing his education and professional experience. Mandel stated that he is a practicing obstetrician and gynecologist and has been an attending physician in that field at Cedars Sinai Medical Center since 1985. He also stated that he was board certified by the American Board of

[1] The other defendants are not parties to this interlocutory appeal.

Obstetrics and Gynecology and that he had experience supervising nurses and residents or physicians in training in the labor and delivery context. Mandel's curriculum vitae stated that he was a fellow of the American College of Obstetrics and Gynecology and had extensive experience teaching and supervising in addition to practicing in his field. He specifically stated in his expert report,

> As a physician who manages labor and delivery, I am also responsible for knowing the consequences, including the neurological consequences and sequelae, for failing to timely deliver a child who is exhibiting signs of fetal distress. Therefore, I am familiar with the neurologic consequences of failing to promptly deliver a child showing signs of fetal distress.

Regarding Legendre, a fourth-year resident in the specialty of obstetrics and gynecology who cared for Morgan on November 5 beginning at approximately 7:00 a.m. until just after 4:00 p.m., Mandel stated in his report that the standard of care required Legendre "to be able to identify when to utilize Pitocin and when Pitocin must be avoided to ensure maternal and fetal well-being" and "to be able to identify appropriate patients for induction." Mandel stated,

> Use or continued use of Pitocin can cause contractions which are too close together or are too strong. During contractions, blood flow and oxygen to the placenta is decreased or eliminated. If the contractions are too close together or are too strong, then that reduces the ability of the placenta to recover and get necessary oxygen. Without adequate oxygen to the placenta, the child does not receive adequate oxygen, which can cause hypoxia and resulting neurologic injury. This is taught in medical school and is certain basic information which any first, second, third, or fourth year OB/GYN resident should be fully aware of.

Mandel also stated, "The standard of care required Dr. Legendre to either not initiate an order for, or discontinue, induction as Ms. Morgan was not an appropriate candidate for induction of labor due to [the decrease in her amniotic fluid], and an unfavorable cervix." Mandel further stated that the standard of care required Legendre to recognize that administration of Pitocin was "contraindicated due to [M.J.M.'s] nonreassuring fetal heart rate status." Mandel identified specific indications in M.J.M.'s fetal heart rate records of "nonreassuring fetal status" and asserted that the standard of care required Legendre to discontinue the use of Pitocin for Morgan and to summon the attending physician.

Mandel asserted that Legendre failed to meet the standard of care, among other ways, "by failing to discontinue the Pitocin for Ms. Morgan at 7am, 9:30am, 10:15am and 4:03 or 4:09pm on November 5, when Dr. Legendre was at the patient's beside" while M.J.M. demonstrated "nonreassuring fetal status" as evidenced by fetal heart rate monitoring. He stated that Legendre also failed to meet the standard of care by failing to inform the attending physician of M.J.M.'s "nonreassuring FHR [fetal heart rate] status."

Regarding causation, Mandel made the following statements in his expert report,

> Taken together, Dr. Legendre's deviations from the standard of care as outlined above constituted a significant part of a chain of events that all combined to be a substantial factor in causing [M.J.M.'s] permanent brain injuries. Specifically, Dr. Legendre's deviations from

> the standard of care in failing to recognize that induction of labor was contraindicated, and in ordering that Pitocin be continued at 9:45am on November 5th, 2014 constituted a significant part of the chain of events that combined to cause [M.J.M.'s] permanent brain injuries proximately caused by the misuse and mismanagement of Pitocin because Dr. Legendre was presented with multiple clear opportunities to terminate the administration of Pitocin, and did not do so, thereby becoming a part of [a] chain of events that combined to cause a permanent injury proximately caused by the misuse and mismanagement of Pitocin. Dr. Legendre's deviation from the standard of care in the failure to order Pitocin to be discontinued on or about 4:03pm and 4:09pm on November 5th, 2014 was, likewise, a significant part in the chain of events that combined to cause [M.J.M.'s] permanent brain injuries proximately caused by the misuse and mismanagement of Pitocin because Dr. Legendre was presented with a clear opportunity to avoid or terminate the administration of Pitocin, and did not do so, thereby becoming a part of [a] chain of events that combined to cause a permanent injury proximately caused by the misuse and mismanagement of Pitocin. Likewise, Dr. Legendre's deviation from the standard of care in failing to properly notify the attending physician or invoke the . . . chain of command at any point in her hours visiting Ms. Morgan's bedside constituted a significant part of a chain of events that all combined to be a substantial factor in [M.J.M.'s] permanent brain injuries because her failure to do so continued a course of events that precluded the interventions necessary to end or avoid the ongoing course of ischemia and/or hypoxia that proximately caused [M.J.M.'s] permanent brain injuries.

Mandel concluded, with regard to Legendre:

> In all reasonable medical probability, adherence to the standard of care by Dr. Legendre at 7am, 9:30am, 9:45am, 10:15am, 4:03pm or 4:09pm on November 5th, 2014 as further discussed above would have precluded or at least minimized [M.J.M.'s] permanent injuries because Dr. Legendre's adherence to the standard of care would have terminated the misuse and mismanagement of Pitocin and the course of ongoing intrapartum asphyxiation evidenced by nonreassuring fetal heart tracings that proximately caused [M.J.M.'s] hypoxicischemic injuries.

Relevant to Rouhani, a first-year resident in the specialty of obstetrics and gynecology who treated Morgan in the early morning hours of November 5, Mandel's amended report stated that, as with Legendre, the standard of care required that Rouhani "be able to identify when to utilize Pitocin and when Pitocin must be avoided to ensure maternal and fetal well-being" and to "be able to identify appropriate patients for induction." Specifically, "[t]he standard of care required Dr. Rouhani to discontinue any order for the Pitocin in the face of signs of fetal distress or impending fetal distress." Like Legendre, Rouhani was also required by the standard of care to notify the attending physician of M.J.M.'s "nonreassuring FHR status."

Mandel stated in his report that Rouhani breached the standard of care by ordering Pitocin for Morgan "[i]n the presence of a decreasing FHR baseline, coupled with minimal-to-absent variability in this Mother already diagnosed with decreased amniotic fluid and an unfavorable cervix." Mandel stated that Rouhani further breached the standard of care by failing to discontinue the order for Pitocin at multiple times during his care of Morgan and by failing to notify the attending physician of M.J.M.'s "nonreassuring FHR status."

As he said with Legendre, Mandel stated, "Taken together, Dr. Rouhani's deviations from the standard of care as outlined above constituted a significant part of a chain of events that all combined to be a substantial factor in causing

[M.J.M.'s] permanent brain injuries." Mandel identified specific instances in which Rouhani's failure to recognize that Pitocin was contraindicated or to notify the attending physical of M.J.M.'s status constituted a proximate cause of M.J.M.'s injuries. Mandel concluded,

> In all reasonable medical probability, adherence to the standard of care by Dr. Rouhani at 1:15am, 3:00am, or 5:12am on November 5th, 2014 as further discussed above would have precluded or at least minimized [M.J.M.'s] permanent injuries because Dr. Rouhani's adherence to the standard of care would have precluded an improper induction, prevented or terminated the misuse and mismanagement of Pitocin, and prevented or terminated the course of ongoing intrapartum asphyxiation evidenced by nonreassuring fetal heart tracings that proximately caused [M.J.M.'s] hypoxic-ischemic injuries.

Mandel's report also addressed the alleged failures of other defendants, including doctors who cared for Morgan and M.J.M. after Rouhani and Legendre, such as Schachel. Mandel specifically stated, regarding Schachel,

> The standard of care required Dr. Schachel to call for the expeditious delivery of [M.J.M.] on November 5-6 by 11:36pm (although delivery was mandated earlier, given the nonreassuring FHR status) when Dr. Schachel was contacted. By this time, there had already been multiple periods of minimal-to-absent and absent variability, recurrent variable decelerations, and later decelerations for the child of a laboring mother diagnosed with preeclampsia and [infection]. At 9:00pm, the FHR tracing had become predictive of abnormal fetal acid-base status.

Mandel stated that Schachel breached the standard of care by failing to deliver M.J.M. sooner and by failing to properly train and supervise the resident physicians, including Rouhani and Legendre.

Rouhani and Legendre again filed a motion to dismiss Morgan's claims against them, arguing in relevant part that Mandel's amended report was deficient on the issue of causation as it related to them and that Morgan had not established Mandel's qualification as an expert on the specific issue of the timing of a hypoxic injury. The trial court denied this motion, and this interlocutory appeal followed.[2]

Adequacy of Expert Report to Establish Causation

In their first issue, Rouhani and Legendre assert that the expert report was insufficient to establish a causal relationship between their alleged negligent acts or omissions and M.J.M.'s injury.

A. Standard of Review and Relevant Law

Texas Civil Practice and Remedies Code section 74.351 requires a claimant in a health care liability claim to file an expert report and serve it on each party not later than the 120th day after the petition was filed. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a) (West 2017). If the plaintiff fails to serve an adequate expert report, the trial court must, on the motion of the affected health care provider, dismiss the plaintiff's claim with prejudice. *Id.* § 74.351(b); *Heriberto Sedeno, P.A. v. Mijares*, 333 S.W.3d 815, 818 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

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[2] *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West Supp. 2016).

We review a trial court's ruling on a section 74.351 motion to dismiss for an abuse of discretion. *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001) (construing predecessor statute); *Cornejo v. Hilgers*, 446 S.W.3d 113, 119 (Tex. App.—Houston [1st Dist.] 2014, pet denied). A trial court abuses its discretion if it acts arbitrarily or unreasonably or without reference to any guiding rules or principles. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010); *Cornejo*, 446 S.W.3d at 119.

The trial court shall grant a motion challenging the adequacy of an expert report only if it appears to the court that the report "does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6)." TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(*l*); *Strom v. Mem'l Hermann Hosp. Sys.*, 110 S.W.3d 216, 221 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). Subsection 74.351(r)(6) defines "expert report" as "a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician . . . failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed." TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *Palacios*, 46 S.W.3d at 878; *Gray v. CHCA Bayshore L.P.*, 189 S.W.3d 855, 858–59 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

The expert report need not marshal all of the plaintiff's proof, but it must include the expert's opinion on the three statutory elements: standard of care, breach, and causation. *Palacios*, 46 S.W.3d at 878; *Gray*, 189 S.W.3d at 859; *see also Kelly v. Rendon*, 255 S.W.3d 665, 672 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (stating that expert report is not required to prove defendant's liability). To constitute a "good faith effort" to comply with the statute, the expert report must provide enough information to fulfill two purposes: the report must (1) inform the defendant of the specific conduct that the plaintiff has called into question; and (2) provide a basis for the trial court to conclude that the claims have merit. *Scoresby v. Santillan*, 346 S.W.3d 546, 553–54 (Tex. 2010); *Palacios*, 46 S.W.3d at 879; *Cornejo*, 446 S.W.3d at 120. An expert report that merely states the expert's conclusions regarding the three statutory elements does not fulfill these two purposes. *Palacios*, 46 S.W.3d at 879; *see also Scoresby*, 346 S.W.3d at 556 ("No particular words or formality are required [in the expert report], but bare conclusions will not suffice.").

"A causal relationship is established by proof that the negligent act or omission constituted a substantial factor in bringing about the harm and absent the act or omission, the harm would not have occurred." *Cornejo*, 446 S.W.3d at 123. In the report, the expert must explain the basis for his statements and must link his ultimate conclusions to the facts of the particular case. *Bowie Mem'l Hosp. v.*

Wright, 79 S.W.3d 48, 52 (Tex. 2002) (expert must simply provide some basis that defendant's act or omission proximately caused injury); *Cornejo*, 446 S.W.3d at 123; *Gray*, 189 S.W.3d at 859. In assessing the sufficiency of the report, the trial court may not draw any inferences; instead, it must exclusively rely upon the information contained within the four corners of the report. *Wright*, 79 S.W.3d at 52.

B. Analysis

In his amended expert report, Mandel opined that the standard of care required both Rouhani and Legendre to use Pitocin and other techniques to induce labor appropriately and to discontinue the use of Pitocin and contact their attending physician in the face of specific "nonreassuring" fetal heart rate readings in M.J.M.'s monitoring. Mandel stated that they failed to do so, and he stated that their failures were a proximate cause of M.J.M.'s HIE.

Mandel identified specific conduct by both Rouhani and Legendre that breached the appropriate standard of care and "in reasonable medical probability" constituted a substantial factor in bringing about the harm to M.J.M. and, without which, M.J.M.'s harm would not have occurred. *See Scoresby*, 346 S.W.3d at 553–54; *Cornejo*, 446 S.W.3d at 123. Mandel asserted that Legendre's ordering administration of Pitocin at 9:45 a.m. on November 5, 2014, failing to discontinue its use for Morgan just after 4:00 p.m., and failing to notify the attending physician

of M.J.M.'s "nonreassuring" fetal heart rate status resulted in the continued use of Pitocin and continued labor that deprived M.J.M. of adequate oxygen and "continued a course of events that precluded the interventions necessary to end or avoid the ongoing course of ischemia and/or hypoxia that proximately caused [M.J.M.'s] permanent brain injuries." Likewise, Mandel identified Rouhani's ordering of Pitocin for Morgan at 1:15 a.m. on November 5, 2014, when it was contraindicated and his failing to discontinue its use at 3:00 a.m. and 5:12 a.m., as well as his failure to notify his attending physician of M.J.M.'s fetal heart rate status likewise "continued a course of events" that proximately caused M.J.M.'s injuries.

This is sufficient to inform both Rouhani and Legendre of the specific conduct that Morgan had called into question, and it provided a basis for the trial court to conclude that Morgan's claims against them have merit. *See Scoresby*, 346 S.W.3d at 553–54; *Cornejo*, 446 S.W.3d at 125. Mandel's amended report explained, using the facts of this particular case, how Rouhani's and Legendre's alleged negligent acts or omissions—in failing to properly administer Pitocin and failing to notify the attending physician of nonreassuring fetal heart rate status—allowed Morgan's labor to continue even after expeditious delivery was indicated. And Mandel opined that this delay was a substantial factor in bringing about M.J.M.'s injuries, asserting that Rouhani's and Legendre's adherence to the proper

standard of care "would have precluded or at least minimized [M.J.M.'s] permanent injuries." *See Cornejo*, 446 S.W.3d at 123; *see also Wright*, 79 S.W.3d at 53 (expert must simply provide some basis that defendant's act or omission proximately caused injury).

Rouhani and Legendre argue that Mandel "admits" in his report that Rouhani's and Legendre's "care ended before any injury became foreseeable and/or necessary action (expeditious delivery) should have occurred." However, this argument misconstrues Mandel's statements in his expert report. Mandel recognized, in connection with his opinion on Schachel's care, that "[t]he standard of care required [Schachel] to call for the expeditious delivery of [M.J.M.] on November 5-6 by 11:36pm" and that "[a]t 9:00pm, the FHR tracing had become predictive of abnormal fetal acid-base status." But contrary to Rouhani's and Legendre's assertions, these statements did not indicate that those failures were the sole cause of M.J.M.'s injuries. There can be more than one proximate cause of an injury. *Lee Lewis Constr. Inc. v. Harrison*, 70 S.W.3d 778, 784 (Tex. 2001); *Rodriguez v. Moerbe*, 963 S.W.2d 808, 819 (Tex. App.—San Antonio 1998, pet. denied) ("Proximate cause does not necessarily mean the last cause, or the act immediately preceding an injury.").

We conclude that the trial court did not abuse its discretion in denying Rouhani and Legendre's motion to dismiss on the ground that Mandel's amended

report was inadequate as to causation. *See Jelinek*, 328 S.W.3d at 539; *Palacios*, 46 S.W.3d at 875; *Cornejo*, 446 S.W.3d at 119.

We overrule Rouhani and Legendre's first issue.

Mandel's Qualifications

In their second issue, Rouhani and Legendre argue that neither the expert report nor the attached curriculum vitae established that Mandel was qualified to opine on the specific issue of the timing of M.J.M.'s hypoxic injury.

A. Standard of Review and Relevant Law

Whether an expert witness is qualified under the relevant statutes and rules lies within the sound discretion of the trial court. *Cornejo*, 446 S.W.3d at 121 (citing *Broders v. Heise*, 924 S.W.2d 148, 151–52 (Tex. 1996)). Evidence of an expert's qualifications must appear in the four corners of the expert report or its accompanying curriculum vitae. *Id.*; *see Wright*, 79 S.W.3d at 53.

"[A] person may qualify as an expert witness on the issue of the causal relationship between the alleged departure from accepted standards of care and the injury, harm, or damages claimed only if the person is a physician and is otherwise qualified to render opinions on that causal relationship under the Texas Rules of Evidence." TEX. CIV. PRAC. & REM. CODE ANN. § 74.403(a) (West 2017); *see also id.* § 74.351(r)(5)(C) (defining "expert" qualified to give opinion on causation as

"a physician who is otherwise qualified to render opinions on such causal relationship under the Texas Rules of Evidence"); *Cornejo,* 446 S.W.3d at 120.

The Texas Rules of Evidence provide that an expert witness may be qualified on the basis of "knowledge, skill, experience, training, or education" to testify on scientific, technical, or other specialized subjects if the testimony would "help the trier of fact to understand the evidence or to determine a fact in issue." TEX. R. EVID. 702; *Cornejo*, 446 S.W.3d at 121. "Thus, a plaintiff must show that her expert has 'knowledge, skill, experience, training, or education' regarding the specific issue before the court that would qualify the expert to give an opinion on that particular subject." *Cornejo,* 446 S.W.3d at 121 (quoting *Broders*, 924 S.W.2d at 153–54). Although not every licensed physician is qualified to testify on every medical question, a physician need not practice in the particular field about which he is testifying so long as he can demonstrate that he is qualified to opine on the specific issue before the court. *Id.* (citing *Roberts v. Williamson*, 111 S.W.3d 113, 121–22 (Tex. 2003)).

B. Analysis

Morgan was required to establish that Mandel was qualified on the basis of "knowledge, skill, experience, training, or education" to offer opinions concerning the causal link between Rouhani's and Legendre's alleged breaches of the standard

of care and the injuries suffered by M.J.M. *See* TEX. R. EVID. 702; *Cornejo*, 446 S.W.3d at 121.

In his report, Mandel stated that he is a practicing obstetrician and gynecologist and has been an attending physician in that field at Cedars Sinai Medical Center since 1985. Mandel is board certified by the American Board of Obstetrics and Gynecology and a fellow of the American College of Obstetrics and Gynecology. Mandel stated that he had experience supervising nurses and residents or physicians in training in the labor and delivery context, and he specifically stated, "As a physician who manages labor and delivery, I am also responsible for knowing the consequences, including the neurological consequences and sequelae, for failing to timely deliver a child who is exhibiting signs of fetal distress." He also stated that he was "familiar with the neurologic consequences of failing to promptly deliver a child showing signs of fetal distress."

We addressed similar arguments in *Cornejo*. The expert in *Cornejo*, like Mandel, was board certified in obstetrics and gynecology, licensed to practice medicine, affiliated with several hospitals, and had experience in educating and supervising physicians in training. 446 S.W.3d at 121. The *Cornejo* expert, like Mandel, was familiar with the standard of care involved in managing labor and delivery and was familiar with the causes of brain injury to babies during labor and delivery. *Id.* at 122. We rejected the defendant doctor's argument that this expert

was unqualified to opine on the cause of Cornejo's baby's brain injury, holding that

> based on his experience in managing obstetrical complications in pregnancy and labor, interpreting electronic fetal monitoring and abnormal fetal heart rate patterns, and recognizing fetal hypoxia as predicted by fetal heart rate patterns, [the expert] is qualified to opine as to the causal relationship between a newborn's injuries and the failure of a resident or obstetrician to recognize complications in pregnancy and take appropriate actions. The law does not require him to be "certified in neonatology, pediatric neurology, or maternal-fetal medicine" or "treat newborns" to be qualified to so opine.

See id. at 123.

Mandel, like the expert in *Cornejo*, has experience in managing obstetrical complications and is "familiar with the neurologic consequences of failing to promptly deliver a child showing signs of fetal distress." Rouhani and Legendre argue that Mandel was not qualified to opine on "the specific issue of the timing of hypoxic brain injuries." However, as set out in Mandel's report, the causation issue here did not specifically address the timing of the hypoxic injury to M.J.M. but rather addressed Rouhani's and Legendre's duty to recognize the potential harm to M.J.M. demonstrated in his fetal heart rate monitoring and to take appropriate actions. *See id.*, 446 S.W.3d at 122–23 (citing *Livingston v. Montgomery*, 279 S.W.3d 868, 877 (Tex. App.—Dallas 2009, no pet.)). We conclude that because Mandel demonstrated expertise in managing labor and delivery and the complications that stem from labor and delivery, the trial court reasonably could

have concluded that he was qualified to opine on the causal link between Rouhani's and Legendre's breaches of their duty of care and the harm suffered by M.J.M., including his neurological injuries. *See id.*; *Livingston*, 279 S.W.3d at 877.

We hold that the trial court did not abuse its discretion in concluding that Mandel is qualified to opine as the causal relationship between M.J.M.'s injuries and the alleged failure of either Rouhani or Legendre to recognize the complications experienced by Morgan and take appropriate actions. *See Cornejo*, 446 S.W.3d at 123 ("The law does not require [the expert] to be certified in neonatology, pediatric neurology, or maternal-fetal medicine or [to] treat newborns to be qualified to so opine.") (internal quotations omitted); *see also Jelinek*, 328 S.W.3d at 539 (stating that trial court abuses its discretion if it acts arbitrarily or unreasonably or without reference to any guiding rules or principles).

We overrule Rouhani and Legendre's second issue.

Request for Damages

Morgan requested that this Court sanction Rouhani and Legendre for pursuing a frivolous appeal, asking that we determine that this appeal is frivolous and award just damages. *See* TEX. R. APP. P. 45 (authorizing award of "just damages" if appellate court determines that appeal is frivolous). We decline to do so.

To determine whether an appeal is frivolous, we look at the record from the viewpoint of the advocate and decide whether the advocate had reasonable grounds to believe the case could be reversed. TEX. R. APP. P. 45; *Glassman v. Goodfriend*, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). After reviewing the record here, we cannot conclude that Rouhani and Legendre's advocate had no reasonable grounds to believe that the trial court's order here could be reversed. *See Goss v. Houston Cmty. Newspapers*, 252 S.W.3d 652, 657 (Tex. App.—Houston [14th Dist.] 2008, no pet.) ("Whether to grant sanctions for a frivolous appeal is a matter of discretion that this court exercises with prudence and caution and only after careful deliberation in truly egregious circumstances."). We deny Morgan's request for damages under Rule 45.

Conclusion

We affirm the order of the trial court denying Rouhani and Legendre's motion to dismiss.

Evelyn V. Keyes
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.