

DISMISS; and Opinion Filed April 8, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00120-CV

**THE ESTATE OF CARMELINA "MILLIE" SMITH,
BY AND THROUGH ITS REPRESENTATIVE, CHRISTINE FABER,
INDIVIDUALLY AND ON BEHALF OF ALL KNOWN HEIRS, Appellant**

V.

**COLLIN CREEK ASSISTED LIVING CENTER, INC.
D/B/A DAYSPRING ASSISTED LIVING COMMUNITY, Appellee**

**On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-02547-2015**

MEMORANDUM OPINION

Before Chief Justice Wright and Justices Lang-Miers and Stoddart
Opinion by Chief Justice Wright

Appellant appeals the trial court's January 19, 2016 interlocutory order dismissing its claims against appellee for failure to file an expert report. Appellant's claims against a second defendant remain pending in the trial court. In its brief on the merits, appellee asserts that this Court lacks jurisdiction over this interlocutory appeal. We agree.

A party may bring an interlocutory appeal of rulings in medical liability cases in two circumstances. First, a party may appeal when the trial court denies a motion to dismiss under section 74.351(b) for failure to file an expert report. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West Supp. 2015). Second, a party may appeal when a trial court grants a motion to dismiss pursuant to 75.351(l), based on a timely served, but inadequate, expert report. *See*

TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(10) (West Supp. 2015). The order appealed in this case, however, *grants* dismissal based on failure to serve an expert report. The civil practice and remedies code does not authorize appeal of such orders. *See Fisher v. Medical Center of Plano*, No. 05-14-01441-CV, 2015 WL 73441, at *2 (Tex. App.—Dallas Jan. 6, 2015, no pet.) (mem. op.); TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9), (10).

Because the order is neither a final judgment nor an appealable interlocutory order, this Court lacks jurisdiction. Accordingly, we dismiss the appeal. *See* TEX. R. APP. P. 42.3(a).

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE ESTATE OF CARMELINA
“MILLIE” SMITH, BY AND THROUGH
ITS REPRESENTATIVE, CHRISTINE
FABER, INDIVIDUALLY AND ON
BEHALF OF ALL KNOWN HEIRS,
Appellant

On Appeal from the 219th Judicial District
Court, Collin County, Texas.
Trial Court Cause No. 219-02547-2015.
Opinion delivered by Chief Justice Wright.
Justices Lang-Miers and Stoddart
participating.

No. 05-16-00120-CV V.

COLLIN CREEK ASSISTED LIVING
CENTER, INC. D/B/A DAYSPRING
ASSISTED LIVING COMMUNITY,
Appellee

In accordance with this Court’s opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellee COLLIN CREEK ASSISTED LIVING CENTER, INC. D/B/A DAYSPRING ASSISTED LIVING COMMUNITY recover its costs of this appeal from appellant THE ESTATE OF CARMELINA “MILLIE” SMITH, BY AND THROUGH ITS REPRESENTATIVE, CHRISTINE FABER, INDIVIDUALLY AND ON BEHALF OF ALL KNOWN HEIRS.

Judgment entered this 8th day of April, 2016.