

Affirmed; Opinion Filed December 20, 2016.



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

No. 05-16-00453-CV

**HICKORY TRAIL HOSPITAL, L.P., Appellant
V.
MARVELLA LOYA, Appellee**

**On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-02031**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Evans
Opinion by Justice Evans

In this interlocutory appeal, appellant Hickory Trail Hospital, L.P. appeals from an order denying its motion to dismiss the health care liability claims brought against it by appellee Marvella Loya. Loya claims Hickory Trail had her involuntarily committed to its psychiatric facility by misrepresenting to a Dallas County court that a physician had examined and evaluated Loya when in fact she was seen only by a licensed professional counselor intern (LPC-Intern). Loya further claims the involuntary commitment resulted in health care bills and other injuries and damages. In a single issue, Hickory Trail asserts the expert report Loya provided in support of her claims failed to set forth the necessary causal connection between the alleged breach and Loya's injuries. After reviewing Loya's expert's report, we conclude the trial court could have reasonably determined that the report adequately explained the basis for the causation opinion,

linking its conclusions to the facts and the alleged breach. Because the trial court did not abuse its discretion in denying Hickory Trail's motion, we affirm the trial court's order.

BACKGROUND

In her original petition, Loya alleged that she was a banking professional and primary caregiver to her two children and that she has lived with depression for most of her adult life. In late 2012 and early 2013, Loya sought the help of her personal physician in obtaining medication to treat her depression. Loya tried several medications but experienced various side effects. Her doctor ultimately prescribed Abilify. Concerned about side effects, Loya went to Hickory Trail on February 25, 2013, seeking dosage advice and related counseling services. It is undisputed that after filling out intake paperwork, Loya was assessed by Angela Marquart, an LPC-Intern.¹

According to Loya, after Marquart's assessment, Loya was introduced to a doctor who told her she needed to be admitted on an in-patient basis. Loya did not consent to be admitted, stating she had two children to care for and work responsibilities. Nevertheless, Loya was not permitted to leave the facility, and Marquart proceeded to fill out and file a temporary application for court-ordered mental health services. The application included a "Physician's Certificate of Medical Examination for Mental Illness" signed by Dr. Rupinder Bhatia certifying that he evaluated and examined Loya. Among other things, the Certificate stated that Loya was mentally ill, likely to cause serious harm to herself, and unable to make a rational and informed decision as to whether to submit to treatment. Under the section provided to explain the detailed basis for this opinion is the handwritten remark, "patient is suicidal and stated 'if I had access to something I might have done it.'"²

¹ Marquart had met with Loya ten days earlier and recommended an "Adult Partial Hospitalization Program" that met Monday through Friday, four hours per day for two to four weeks. Loya chose not to attend the program.

² The Certificate included an addendum signed by Bhatia indicating this statement and other statements and acts by Loya on February 25th were taken from the medical history "as reported by the applicant or other observer."

Based on the application, the mental health court issued an order detaining Loya at Hickory Trail against her will pending a hearing on probable cause. At the probable cause hearing three days later, however, the trial court found that Loya did not present a substantial risk of serious harm to herself and ordered her immediate release. Loya was then returned to Hickory Trail where she was released “against medical advice” later that evening on February 28, 2016.

Loya filed this lawsuit against Hickory Trail for false imprisonment and unconscionable conduct under the Deceptive Trade Practices Act alleging her detention was unlawful. In support of her claims, Loya filed a chapter 74 expert report by Dr. Mitchell Dunn, a board-certified psychiatrist and medical director of the forensic program at Terrell State Hospital where he also serves as associate clinical director. Hickory Trail moved to dismiss Loya’s lawsuit arguing Dunn’s report was inadequate as to the hospital. After a hearing, the trial court denied Hickory Trail’s motion and permitted Loya to file an amended report. Upon receipt of the amended report, Hickory Trail again moved to dismiss Loya’s lawsuit asserting, among other things, the report was conclusory and failed to establish a causal connection between any alleged breach and Loya’s injuries. The trial court again denied Hickory Trail’s motion. This appeal followed.

ANALYSIS

Each person in Texas has a federal and state constitutional right not to be involuntarily committed except upon sufficient evidence. *See O’Connor v. Donaldson*, 422 U.S. 563, 575–76 (1975) (finding of actual mental illness, without more, cannot justify involuntary deprivation of a person’s physical liberty); TEX. CONST. art. I, § 15-a (“No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony.”). In the circumstances relevant to Loya’s involuntary detention, the statutory procedures for involuntary commitment require a physician to examine and evaluate the patient and to certify to the court the physician’s

determinations based on that examination. *See* TEX. HEALTH & SAFETY CODE ANN. § 574.021 (West 2010) and § 574.011 (West Supp. 2016).³

Chapter 74 of the civil practice and remedies code requires a claimant pursuing a health care liability claim to serve one or more expert reports on each party no later than 120 days after that party's original answer is filed.⁴ TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a) (West Supp. 2016). A report is sufficient to meet the requirements of chapter 74 if it represents "an objective good faith effort to comply with the definition of an expert report." *See id.* § 75.351(l).

An "expert report" is defined 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 or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

Id. § 74.351(r)(6). If a report is timely served, a party "whose conduct is implicated in [the] report must file and serve any objection to the sufficiency of the report not later than the later of the 21st day after the date the report is served or the 21st day after the date the party's answer is filed, failing which all objections are waived." *Id.* § 74.351(a).

We review a trial court's decision on a motion to dismiss a health care liability claim under the expert report provisions of chapter 74 for an abuse of discretion. *Nexion Health at Duncanville, Inc. v. Ross*, 374 S.W.3d 619, 622 (Tex. App.—Dallas 2012, pet. denied). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *Id.* A trial court does not abuse its discretion merely because it decides a discretionary matter differently than an appellate court might have decided it. *Baylor Univ. Med. Ctr. v. Biggs*, 237 S.W.3d 909, 916 (Tex. App.—Dallas 2007, pet. denied). Under an abuse of

³ Section 574.011 was amended by the 84th Texas Legislature in 2015 making minor, nonsubstantive changes. Because the amendment does not affect this case, we refer to the current statute.

⁴ Loya does not dispute that the expert report requirements of chapter 74 applied to her claims.

discretion standard, “close calls must go to the trial court.” *See Larson v. Downing*, 197 S.W.3d 303, 305 (Tex. 2006) (per curiam). However, a trial court has no discretion in determining what the law is or applying the law to the facts. *Biggs*, 237 S.W.3d at 916.

In its sole issue, Hickory Trail argues that Dunn’s amended expert report fails to establish the necessary causal link between the hospital’s alleged breach and Loya’s claimed injury or damages. Before turning to the merits of Hickory Trail’s complaint, however, we first consider Loya’s contention that Hickory Trail waived its causation complaint by failing to object to Dunn’s initial report on this basis.

A. Waiver

Our review of Hickory Trail’s motion to dismiss and objections to Dunn’s initial report reveals that Hickory Trail sought dismissal of Loya’s claims “[b]ecause plaintiff failed to serve an expert report that provides a fair summary of the standards of care applicable to Hickory Trail Hospital, the manner in which Hickory Trail Hospital breached any alleged standards of care and the causal relationship between that failure and the damages claimed by the second extended deadline”⁵ Upon receiving Dunn’s amended report, Hickory Trail asserted the report was conclusory and again “failed to establish a causal connection between any alleged breach and Plaintiff’s would-be injuries.” Because Hickory Trail raised a causation objection within twenty-one days of receipt of Dunn’s first report, Loya’s waiver argument is not well-taken. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a); *Bakhtari v. Estate of Dumas*, 317 S.W.3d 486, 493 (Tex. App.—Dallas 2010, no pet.). Accordingly, we turn to the merits of the causation issue before us.

⁵ Although Loya argues this objection goes to the timeliness of the report, we read Hickory Trail’s motion as objecting to the adequacy of the three required elements of an expert report.

B. Adequacy of Report

An expert report under chapter 74 must provide enough information to fulfill two purposes: it must inform the defendant of the specific conduct the plaintiff has called into question and provide a basis for the trial judge to conclude that the claims have merit. *Nexion Health*, 374 S.W.3d at 623. The expert report requirement “establishes a threshold over which a claimant must proceed to continue a lawsuit. It does not establish a requirement for recovery.” *Murphy v. Russell*, 167 S.W.3d 835, 838 (Tex. 2005). To satisfy the required element of causation under chapter 74, an expert report must include a fair summary of the expert’s opinion regarding the causal relationship between the breach of the standard of care and the injury, harm, or damages claimed. *Biggs*, 237 S.W.3d at 922. But an expert report does not need to marshal all of the plaintiff’s proof; it may be informal and the information presented need not meet the same requirements as evidence offered in summary judgment proceedings or in a trial. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 878–79 (Tex. 2001). For our review of the adequacy of a medical expert report, we take the allegations in the report as true. *See Marino v. Wilkins*, 393 S.W.3d 318, 320 n.1 (Tex. App.—Houston [1st Dist.] 2012, pet. denied).

A report meets the causation requirement if it explains the basis of the expert’s statements, linking his conclusions to the facts. *Bowie Mem’l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002) (per curiam). We determine whether a causation opinion is sufficient by considering the opinion in the context of the entire report. *See Benavides v. Garcia*, 278 S.W.3d 794, 799 (Tex. App.—San Antonio 2009, pet. denied).

Mindful of the above standards, we examine Dunn’s amended report. Dunn explains that a psychiatric hospital seeking an order of protective custody for the involuntary commitment of a patient requires a thorough and unbiased mental health status evaluation by a qualified physician

to determine that the legal requisites for involuntary commitment are satisfied. The physician examination is more than “a review of a checklist of factors, but requires an analysis that weighs both the benefits and risks of detaining someone against their will.” It includes consideration of “the patient’s mental state at the time of the evaluation, the risk to the patient and others, the patient’s level of functioning, and any acute elements that prevent the patient from being able to safely function in the community.” An evaluation performed by someone other than a qualified physician is insufficient because “such a person lacks the skill, training and qualifications to determine whether a patient should be detained against her will.”

Dunn states that Hickory Trail breached the above standard of care by detaining and seeking the involuntary commitment of Loya without the requisite mental health status examination by a physician. Instead, Dunn explains that Loya was assessed only by an LPC-Intern who lacked the skill, training and experience to evaluate a patient for involuntary commitment. According to Dunn, Marquart appears to have concluded certain statements by Loya justified her involuntary detention. Dunn reports that Loya believes her words were “‘twisted’ by [Marquart] to present a stronger argument for hospitalization.” Dunn asserts that based on Marquart’s incomplete and inadequate assessment, she filled out and submitted an application for Loya’s involuntary commitment along with a Physician’s Certificate of Mental Examination for Mental Illness and Addendum. Dunn further asserts that Marquart asked Dr. Rupinder Bhatia to sign the Certificate and Addendum even though she knew that Bhatia had not examined Loya. Thus, Dunn contends, “Hickory Trail knowingly and deliberately obtained and submitted a false Physician’s Certificate of Medical Examination for Mental Illness to obscure the fact that Hickory Trail was detaining Ms. Loya against her will on the basis of [an LPC-Intern’s] interview of Ms. Loya rather than on the basis of a thorough mental health evaluation by a licensed physician.”

Dunn opines that “[b]efore detaining [Loya], Hickory Trail should have had a qualified physician assess whether potential less restrictive alternatives to hospitalization would have been more appropriate” Dunn asserts that if a qualified physician had made the required mental health status evaluation, he would have discovered that Loya experienced “chronic suicidal thinking for much of her life, that she never had a plan or desire to kill herself, and that her religious faith caused her to believe that suicide is a sin and that ‘there is no forgiveness on suicide.’” Dunn concludes that Hickory Trail did not have an adequate basis to detain Loya against her will and misrepresented to the Dallas County court the basis for its decision to temporarily detain Loya.

With respect to causation, Dunn opines, “But for the breaches described above, Ms. Loya would not have been detained against her will by Hickory Trail from February 25, 2013 through February 28, 2013.” He further states that Loya’s economic and noneconomic damages sustained as a result of her involuntary commitment included medical expenses, lost wages, attorney’s fees, mental anguish, emotional distress, loss of personal liberty and “are directly tied to Hickory Trail’s breach of the standard of care.”

Dunn’s report clearly states that Hickory Trail breached the standard of care required by submitting a certificate of mental examination filled out by an LPC-Intern and merely signed by Bhatia, “to obscure the fact that Hickory Trail was detaining Ms. Loya against her will on the basis of Ms. Marquart’s interview of Ms. Loya rather than on the basis of a thorough mental health evaluation by a licensed physician.” In other words, Loya’s involuntary commitment was improperly based on an LPC-Intern’s exam and not a physician’s examination. He also links the alleged breach to Loya’s damages by stating that she would not have been detained against her will but for Hickory Trail’s breach. We therefore conclude the report adequately explains the factual basis of Dunn’s conclusion that Hickory Trail’s failure to have a physician examine Loya

before seeking her involuntary commitment caused Loya to sustain the injuries and damages she sustained as a result of the involuntary commitment.

In reaching our conclusion, we necessarily reject Hickory Trail's assertion that to establish causation, Dunn was required to state explicitly that had a physician conducted a psychiatric assessment, Loya would have avoided involuntary hospitalization and the alleged damages arising therefrom without increasing the risk of suicide or other self-harm. Hickory Trail cites no authority requiring such language in the report. Moreover, in making this assertion, it suggests Dunn's entire causation opinion consists only of two sentences. We disagree. A report's adequacy does not depend on whether the expert uses any particular "magical words." *Wright*, 79 S.W.3d at 53. Causation may be shown through explanation of a chain of events that begins with the health care provider's actions and ends in injury to the plaintiff. *See Nexion Healthcare Mgmt., Inc. v. Sosa*, No. 05-15-01083-CV, 2016 WL 1457069, at *4 (Tex. App.—Dallas Apr. 12, 2016, no pet.) (mem. op.) (citing *McKellar v. Cervantes*, 367 S.W.3d 478, 485 (Tex. App.—Texarkana 2012, no pet.)).

Reading Dunn's report in its entirety, it is clear that he concluded Loya's involuntary commitment and resulting damages were caused by Hickory Trail's failure to have Loya assessed by a physician prior to seeking her involuntary commitment and presenting a false certification of physician examination and evaluation to the court in support of its application to have Loya involuntarily committed. Further, in Dunn's opinion, a physician would have looked beyond Loya's statements to determine whether she was in a state of acute crisis requiring involuntary hospitalization or if she could be safely treated in the community with medication and therapy, or through outpatient treatment. Dunn also noted that had a physician evaluated Loya, he or she would have discovered factors that ameliorated the risk perceived by Marquart such as: (1) Loya experienced chronic suicidal thinking for most of her life but never had a plan

or desire to kill herself and (2) that her religious beliefs precluded suicide. Dunn further states that but for the breaches he described (Hickory Trail's failure to have Loya examined by a qualified physician and the presentation to the Dallas County court of a false certification that a physician had examined and evaluated Loya) Loya would not have been detained against her will. A necessary corollary to this statement is had a qualified physician examined Loya, she would not have been involuntarily committed. The trial court could have reasonably determined that Dunn's report represented a good-faith effort to summarize the causal relationship between Hickory Trail's failure to meet the applicable standard of care and Loya's injuries and damages. Moreover, when read in its entirety, the report informs Hickory Trail of the specific conduct Loya has called into question and provides a basis for the trial court to conclude Loya's claims against Hickory Trail have merit. Accordingly, the trial court did not abuse its discretion when it denied Hickory Trail's motion to dismiss.

We affirm the trial court's order denying Hickory Trail's motion to dismiss.

/David W. Evans/
DAVID EVANS
JUSTICE

Lang, J., dissenting

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

JUDGMENT

HICKORY TRAIL HOSPITAL, L.P.,
Appellant

No. 05-16-00453-CV V.

MARVELLA LOYA, Appellee

On Appeal from the 95th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-15-02031
Opinion delivered by Justice Evans, Justices
Lang and Myers participating.

In accordance with this Court's opinion of this date, the trial court's order denying Hickory Trail Hospital's motion to dismiss is **AFFIRMED**.

It is **ORDERED** that appellee Marvella Loya recover her costs of this appeal from appellant Hickory Trail Hospital, L.P.

Judgment entered this 20th day of December, 2016.