AFFIRMED; Opinion Filed November 7, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00181-CV

BAYLOR UNIVERSITY MEDICAL CENTER, INC., BAYLOR SCOTT & WHITE HEALTH; BSW HEALTH SERVICES AND WILLIAM P. SHUTZE, M.D., Appellants
V.
BAHRAUM DANIEL DANESHFAR, M.D., Appellee

On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-11793-J

MEMORANDUM OPINION

Before Justices Francis, Myers, and Whitehill
Opinion by Justice Myers

This case concerns whether a medical resident who is terminated from a hospital's fellowship program and brings suit for wrongful termination is subject to the expert-report requirements of section 74.351 of the Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351. Baylor University Medical Center, Inc., Baylor Scott & White Health, BSW Health Services, (collectively "Baylor") and William P. Shutze, M.D. appeal the trial court's denial of their motion to dismiss the suit brought by Bahraum Daniel Daneshfar, M.D. under section 74.351 because Daneshfar failed to serve an expert report. We affirm the trial court's order denying the motion to dismiss.

BACKGROUND[1]

In June 2013, Daneshfar entered into a fellowship residency program at Baylor studying vascular surgery. The hospital placed Daneshfar under the tutelage of Shutze, the director of the program. As part of the program, Shutze was supposed to give Daneshfar a review every six months. However, Shutze did not perform the review until April 2014 despite Daneshfar's repeated requests for the review. At that first review, Shutze told Daneshfar he personally did not like him and did not respect him as a medical associate. Shutze required Daneshfar to work far more shifts and on-call periods than the other residents.

In December 2014, Daneshfar asked Shutze to give him the required review, but Shutze refused. Shutze also berated and belittled Daneshfar in front of others and repeatedly threatened to fire Daneshfar if he complained about Shutze's behavior to the Graduate Medical Education Office.

Daneshfar requested a meeting with Baylor's Designated Institutional Officer for the Graduate Medical Education Office to air his grievances with the fellowship program and Shutze. However, at the meeting, which Shutze also attended, Daneshfar was not allowed to air his grievances and was told he was on probation because of unsatisfactory performance. After the meeting, Shutze told Daneshfar there was nothing he could do to get off probation. Shutze refused to meet further with Daneshfar despite the requirements of Daneshfar's contract with Baylor and the requirements of the Graduate Medical Education program.

Daneshfar retained an attorney who sent a cease-and-desist letter to Baylor. Daneshfar also sent Baylor a complaint that he threatened to submit to the Accreditation Council for Graduate Medical Education, which oversees and certifies post-graduate medical education

[1] The factual statements are drawn from Daneshfar's first amended petition, which was his live pleading at the time of the motion to dismiss.

programs, including Baylor's residency programs. Baylor then terminated Daneshfar from the fellowship program. Daneshfar followed Baylor's internal administrative-review process, but he was not reinstated.

Daneshfar sued Baylor and Shutze for breach of contract, negligence, wrongful discharge, breach of fiduciary duty, assisting or encouraging a breach of fiduciary duty, conspiracy to breach a fiduciary duty, negligent supervision, tortious interference with contract, duress, and intentional infliction of emotional distress. Eight months later, Baylor and Shutze filed a motion to dismiss Daneshfar's claims asserting the claims were health care liability claims and that Daneshfar did not serve them with an expert report as required by section 74.351 of the Civil Practice and Remedies Code. *See* CIV. PRAC. § 74.351(a), (b). The trial court held a hearing on the motion to dismiss and denied it. Baylor and Shutze now bring this interlocutory appeal contending the trial court erred by denying the motion to dismiss. *See* CIV. PRAC. § 51.014(a)(9).

THE EXPERT-REPORT REQUIREMENT OF § 74.351

In their sole issue on appeal, appellants contend the trial court erred by denying their motion to dismiss because Daneshfar's claims are health care liability claims requiring him to serve appellants with expert reports, which he failed to do.

This case requires interpretation of statutes. When construing statutes, we attempt to ascertain and effectuate the legislature's intent. *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). We start with the plain and ordinary meaning of the statute's words. *Id.* If a statute is unambiguous, we generally enforce it according to its plain meaning. *Id.* We read the statute as a whole and interpret it so as to give effect to every part. *Id.*; *see also Phillips v. Bramlett*, 288 S.W.3d 876, 880 (Tex. 2009) ("We further try to give effect to all the words of a statute, treating none of its language as surplusage when reasonably

possible."). We apply a de novo standard of review to the trial court's interpretation of statutes. *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 513 S.W.3d 487, 493 (Tex. 2017).

Section 74.351 of the Civil Practice and Remedies Code provides, "In a health care liability claim, a claimant shall . . . serve on [each defendant or the defendant's attorney] one or more expert reports . . . for each physician or health care provider against whom a liability claim is asserted." CIV. PRAC. § 74.351(a). The expert report must be served within 120 days after the defendant files its answer. *Id.* If the expert report is not timely served, then, on motion of the affected physician or health care provider, the trial court must dismiss the claim with prejudice to refiling and award the physician or health care provider its costs and attorney's fees. *Id.* § 74.351(b). In this case, Daneshfar did not serve Baylor or Shutze with expert reports after filing his claims against them.

Claimant

Appellants' sole argument in the trial court and on appeal is that Daneshfar was required by section 74.351 to serve expert reports because his claims were health care liability claims. Whether Daneshfar had to serve expert reports turns on whether Daneshfar is a section 74.351 "claimant." *See Tex. W. Oaks Hosp., LP v. Williams*, 371 S.W.3d 171, 178 (Tex. 2012) ("Only claimants are obligated to serve expert reports on physicians or health care providers."). Chapter 74 defines "Claimant" as "a person, including a decedent's estate, seeking or who has sought recovery of damages in a health care liability claim. All persons claiming to have sustained damages as the result of the bodily injury or death of a single person are considered a single claimant." *Id.* § 74.001(a)(2).

For appellants to have proven Daneshfar is a claimant as defined by section 74.001(a)(2), they had to prove (1) he "sought recovery of damages" (2) "in a health care liability claim"; and (3) he claimed "to have sustained damages as the result of the bodily injury or death of a . . .

person." *See id.* § 74.001(a)(2). Appellants proved Daneshfar sought recovery of damages, and they assert his claims are health care liability claims, but they do not address the third element, whether Daneshfar claimed "to have sustained damages as the result of the bodily injury or death of a . . . person."

Daneshfar's petition seeks as damages the economic damages he suffered from being dismissed from the fellowship program, including loss of wages and "damages based on economic loss due to failure to complete the vascular surgery Fellowship." He also sought mental anguish damages related to his "inability to secure employment, removal from all medical environments and inability to practice Plaintiff's professional craft, as well as the embarrassment and rejection from other programs and medical surgical teams." He also sought exemplary damages from appellants' breach of their fiduciary duties to him and their duty to educate him, as well as from appellants' intentional acts against him.

"Bodily injury" is not defined in chapter 74, therefore, we apply a meaning consistent with the common law. *Id.* § 74.001(b). "Bodily injury" commonly means "[p]hysical damage to a person's body." *Bodily Injury*, BLACK'S LAW DICTIONARY (10th ed. 2014); *see Cavin v. Abbott*, No. 03-16-00395-CV, 2017 WL 3044583, at *7 & n.26 (Tex. App.—Austin July 14, 2017, no pet. h.) (quoting Black's Law Dictionary); *see also Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 823 (Tex. 1997) ("We hold that 'bodily injury,' as defined in the Trinity policy, does not include purely emotional injuries . . . and unambiguously requires an injury to the physical structure of the human body. Our decision comports with the commonly understood meaning of 'bodily,' which implies a physical, and not purely mental, emotional, or spiritual harm."). "Bodily injury" might also include offensive contact. *See Loaisiga v. Cerda*, 379 S.W.3d 248, 256 (Tex. 2012) (claims of female patients suing doctor who unnecessarily touched their breasts during medical examinations may be health care liability claims). And it can

include damages from mental health care. *See Fudge v. Wall*, 308 S.W.3d 458, 462 (Tex. App.—Dallas 2010, no pet.) ("Health care includes the care and treatment of mental conditions."). Under his claim for intentional infliction of emotional distress, Daneshfar alleged he "was forced to seek medical treatment to assist in overcoming the constant state of threats and fear, and as a result of Defendants' efforts to control Plaintiff." Daneshfar did not plead medical expenses as part of his damages, nor did he allege under his claim for intentional infliction of emotional distress that he suffered any injuries that were not emotional. Nowhere did Daneshfar allege that he "sustained damages as the result of the bodily injury or death" of someone.

We conclude Daneshfar's claims do not assert he sustained damages as a result of the bodily injury or death of anyone. Therefore, Daneshfar is not a "claimant" for purposes of chapter 74. Because he is not a claimant, he was not required to serve appellants with expert reports.

Health Care Liability Claim

Turning to appellants' argument that Daneshfar's claims are health care liability claims, the Civil Practice and Remedies Code defines "health care liability claim" as:

> a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, *which proximately results in injury to or death of a claimant*, whether the claimant's claim or cause of action sounds in tort or contract. The term does not include a cause of action described by Section 406.033(a) or 408.001(b), Labor Code, against an employer by an employee or the employee's surviving spouse or heir.

CIV. PRAC. § 74.001(a)(13) (emphasis added). Appellants do not address the "injury" element of the term except to say, "In his petitions, Appellee alleges [Baylor] and Shutze's improper actions were the proximate causes of his injuries. As such, the third element of an HCLC has been met." (Citations omitted.)

Unlike the definition of "claimant," which requires "bodily injury or death," the definition of "health care liability claim" does not place an express limitation on "injury." Thus, appellants appear to assert that Daneshfar's pleaded injuries of economic loss and mental anguish qualify as "injury" under the definition of "health care liability claim." We disagree. The "injury" mentioned in the provision is "injury to . . . a claimant." Because the definition of "health care liability claim" incorporates the definition of "claimant," the meaning of the phrase "injury to . . . a claimant" must incorporate the limitation on the meaning of the word "injury" found in the definition of "claimant." As discussed above, the injury to a claimant must be "bodily injury," not economic injury or mental anguish. Therefore, we conclude the phrase "which proximately results in injury to . . . a claimant" requires that the injury be "bodily injury."

As discussed above, Daneshfar did not allege any bodily injury. Therefore, his claims are not health care liability claims.[2]

CONCLUSION

Daneshfar is not a "claimant" and his causes of action are not "health care liability claims." Therefore, the expert-report requirement of section 74.351 does not apply to his claims. We conclude the trial court did not err by denying appellants' motion to dismiss Daneshfar's claims. We overrule appellants' sole issue on appeal.

[2] There are numerous Texas cases where doctors terminated from hospital residency programs have sued for wrongful termination. None of the opinions show that the defendant hospitals and physicians in those cases asserted the terminated-doctors' claims were health care liability claims requiring service of expert reports. *See Univ. of Tex. Health Sci. Ctr. at Tyler v. Nawab*, No. 06-16-00083-CV, 2017 WL 1436486 (Tex. App.—Texarkana Apr. 21, 2017, pet. denied); *Tex. Tech Univ. Health Scis. Ctr. v. Enoh*, No. 08-15-00257-CV, 2016 WL 7230397 (Tex. App.—El Paso Dec. 14, 2016, no pet.); *Swate v. Tex. Tech. Univ.*, No. 03-98-00227-CV, 1999 WL 106718 (Tex. App.—Austin Mar. 4, 1999, no pet.) (not designated for publication); *Brown v. Univ. of Tex. Health Ctr. at Tyler*, 957 S.W.2d 911 (Tex. App.—Tyler 1997, no pet.); *see also Rose v. Univ. of Tex. Sw. Med. Sch. at Dallas*, No. 01-10544, 32 Fed. Appx. 131, 2002 WL 335277 (5th Cir. Feb. 22, 2002) (per curiam); *Shaboon v. Duncan*, 252 F.3d 722 (5th Cir. 2001) ; *Shah v. Univ. of Tex. Sys., Med. Found.*, No. 97-20775, 156 F.3d 182, 1998 WL 546475 (5th Cir. Aug. 7, 1998) (per curiam); *Simmons v. Jackson*, No. 3:15-CV-1700-D, 2017 WL 3051484 (N.D. Tex. July 9, 2017); *Refaei v. McHugh*, No. 14-51148, 624 Fed. Appx. 142 (5th Cir. June 11, 2015); *Beltran v. Univ. of Tex. Health Sci. Ctr. at Houston*, 837 F. Supp. 2d 635 (S.D. Tex. 2011); *Sayibu v. Univ. of Tex. Sw. Med. Ctr. at Dallas*, No. 3:09-CV-1244-B, 2010 WL 4780732 (N.D. Tex. Nov. 22, 2010); *Nagm v. Univ. of Tex. Health Sci. Ctr. at Houston*, No. Civ.A. H-04-2132, 2005 WL 1185801 (S.D. Tex. May 11, 2005); *Karagounis v. Univ. of Tex. Health Sci. Ctr. at San Antonio*, 168 F.3d 485, 1999 WL 25015 (W.D. Tex. 1999) (per curiam).

We affirm the trial court's judgment.

/Lana Myers/
LANA MYERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

BAYLOR UNIVERSITY MEDICAL CENTER, INC., BAYLOR SCOTT & WHITE HEALTH; BSW HEALTH SERVICES AND WILLIAM P. SHUTZE, M.D., Appellants

No. 05-17-00181-CV V.

BAHRAUM DANIEL DANESHFAR, M.D., Appellee

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Opinion delivered by Justice Myers. Justices Francis and Whitehill participating.

In accordance with this Court's opinion of this date, the order of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee BAHRAUM DANIEL DANESHFAR, M.D. recover his costs of this appeal from appellants BAYLOR UNIVERSITY MEDICAL CENTER, INC., BAYLOR SCOTT & WHITE HEALTH; BSW HEALTH SERVICES AND WILLIAM P. SHUTZE, M.D.

Judgment entered this 7th day of November, 2017.