Concur and Opinion Filed January 31, 2022

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-00683-CV

IN RE: JUAN ANDRES CUELLAR, OLDCASTLE MATERIALS TEXAS, INC, F/K/A APAC-TEXAS, INC., OLDCASTLE PAYROLL INC., F/K/A APAC, INC. AND APAC HOLDINGS, INC., Relators

On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-17-15831

CONCURRING OPINION

Before Justices Osborne, Pedersen, III, and Goldstein
Opinion by Justice Pedersen, III

I write separately in an attempt to provide some guidance to Texas trial courts on this area of law. *But see, e.g., In re Lee*, No. 05-01-00989-CV, 2001 WL 869568, at *1 (Tex. App.—Dallas Aug. 2, 2001, no pet.); TEX. R. APP. P. 52.8(d). Given the trial court's (i) three hearings on this motion and (ii) concerns regarding the reach and application of *In re Allstate Indem. Co.*, it is evident that this issue is worthy of exposition. 622 S.W.3d 870, 883 (Tex. 2021) (orig. proceeding). Relators argue that a counter-affidavit affiant's facial compliance with Civil Practice and Remedies Code § 18.001 precludes a trial court from serving as a gatekeeper for the affiant's

expert testimony pursuant to Texas Rule of Evidence 702. They are separate and distinct inquiries.

I. BACKGROUND

Real party in interest, Wen Oliver, sued relators claiming that she was injured in an automobile collision. Among other damages, Oliver sought to recover medical expenses. Relators designated three expert witnesses on reasonable medical charges: Gregory Money, Wesley Duval, D.C., and Vishal Patel, M.D. Pertinent here, Money's designation stated:

> Mr. Money Will testify regarding the services and charges provided by Daytime Outpatient Surgery Center and Star Medical Center. Mr. Money will testify that the reasonable charges for Daytime Outpatient Surgery Center should have been $4,122.00. Mr. Money will testify that the reasonable charges for Star Medical Center should have been $21,968.00.

Money, Dr. Duval, and Dr. Patel submitted counteraffidavits concerning the cost and necessity of Oliver's medical treatments; the trial court did not strike these counteraffidavits. Oliver took depositions of these experts between December 2020 and January 2021. On May 13, 2021, Oliver moved to strike the "expert testimony" of Money, Duval, and Patel under Texas Rule of Evidence 702—asserting the experts were not qualified and their respective expert testimony was not reliable. Relators responded, inter alia, that Money's controverting affidavits under Texas Civil Practice and Remedies Code § 18.001 established his qualifications and that the experts were otherwise qualified and used reliable methodologies. The trial court

held three hearings on the motion to strike. As to Money, Dr. Duval, and Dr. Patel, the trial court orally ruled:

> [TRIAL COURT]: All right. I will go ahead and strike Mr. Money as an expert in this case.
> . . . .
> I don't know where the Supreme Court is going to go with this. I totally disagree with the *In re Allstate* case. Mr. Zaidi wants to take the chance and see what—you know, I may ultimately get reversed on this, but I do think it's an open issue.
> . . . .
> I agree *In re Allstate* doesn't apply, and I'm going to strike Mr. Money.
> . . . .
> to the extent that [Dr. Patel and Dr. Duval] rely on Mr. Money's methodology, I'll go ahead and strike them. But if they have any other basis besides what Mr. Money relied on, just relying on him, then they can be allowed to testify.

This petition for writ of mandamus followed.

II. ISSUES PRESENTED

Relators raise two issues to our Court, which I reproduce verbatim:

> 1. The trial court clearly abused its discretion in excluding Money from testifying because the record before the trial court establishes that Money is qualified, his opinions are relevant, and his opinions are reliable.
>
> 2. Under *In re Allstate*, 622 S.W.3d 870 (Tex. 2021), Mandamus is appropriate because the trial court's exclusion of Money and exclusion of other experts from relying on Money's analysis severely compromises Relators' defense regarding the reasonable medical charges for Plaintiff's treatment, or challenging the amounts put forth at trial by Plaintiff.

III. AVAILABILITY OF MANDAMUS REVIEW

To be entitled to the extraordinary relief of a writ of mandamus, relator must show that the trial court clearly abused its discretion and that he has no adequate remedy by appeal. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). A trial judge has no discretion in determining what the law is or in applying the law to the facts. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). Thus, a clear failure by the court to correctly analyze or apply the law will constitute an abuse of discretion. *Id.* This is true even when the law is unsettled. *Huie v. DeShazo*, 922 S.W.2d 920, 927–28 (Tex. 1996). As for assessing the adequacy of an appellate remedy, this Court balances the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding), *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding) (citing *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136). An appeal is not an adequate remedy when "the party's ability to present a viable claim or defense at trial is vitiated or severely compromised" by the trial court's error. *In re Allstate Indem. Co.*, 622 S.W.3d 870, 883 (Tex. 2021) (orig. proceeding) (citing *Walker*, 827 S.W.2d at 843.).

I concur with the majority opinion's conclusion that, under these circumstances, we may appropriately review the trial court's ruling. *See id*.

IV. ANALYSIS

Issue One: Whether The Trial Court Abused Its Discretion In Excluding Money From Testifying

"Under Texas law, a party seeking to recover its past medical expenses must prove that the amounts paid or incurred are reasonable." *In re Allstate Indem. Co.*, 622 S.W.3d at 876. As discussed, relators designated three experts on reasonable medical charges. Texas Rule of Evidence 702 governs the admissibility of expert testimony. TEX. R. EVID. 702; *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 554 (Tex. 1995). Rule 702 provides: "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." TEX. R. EVID. 702. The testimony must be relevant and based on a reliable foundation. *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 727–28 (Tex. 1998); *Robinson*, 923 S.W.2d at 554. Once the opposing party objects to proffered expert testimony, the proponent of the witness' testimony bears the burden of demonstrating its admissibility. *Broders v. Heise*, 924 S.W.2d 148, 152 (Tex. 1996); *Robinson*, 923 S.W.2d at 557. If the foundational data underlying an expert's opinion testimony is unreliable, the expert will not be permitted to base an opinion on that data because any opinion drawn from that data is likewise unreliable. *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997).

"Evidence that is either irrelevant or unreliable is inadmissible." *Spin Doctor Golf, Inc. v. Paymentech, L.P.*, 296 S.W.3d 354, 360 (Tex. App.—Dallas 2009, pet. denied). "A flaw in the expert's reasoning from the data may render reliance unreasonable and render his inferences drawn from information dubious." *Id.* In that circumstance, the expert's scientific testimony is unreliable and constitutes no evidence. *Id.*

Here, the trial court provided no specific basis as to why it struck (i) Money and (ii) Dr. Duval and Dr. Patel to the extent that they relied upon Money's analysis. However, it is apparent from the record that the trial court was concerned about the reliability of Money's methodology. When a party challenges the reliability of an expert's testimony, the trial court should ensure the expert's opinion comports with the applicable professional standards. *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 235 (Tex. 2010) (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001). Under Texas law, the trial judge serves as gatekeeper in assessing the reliability of expert testimony. *TXI Transp. Co.*, 306 S.W.3d at 235 ("[T]he court, as gatekeeper, must determine how the reliability of particular testimony is to be assessed.") (internal quotation omitted).

"In determining reliability, the trial court should evaluate the methods, analysis, and principles relied on by the expert in reaching the opinion and ensure that the opinion comports with applicable professional standards and has a reliable basis in the knowledge and experience of the discipline." *In re S.E.W.*, 168 S.W.3d

875, 883 (Tex. App.—Dallas 2005, no pet.) (citing *Gammill*, 972 S.W.2d at 725–26). In *Robinson*, the Texas Supreme Court identified several non-exclusive factors to determine whether an expert's testimony is reliable and admissible:

> (1) the extent to which the theory has been or can be tested;
> (2) the extent to which the technique relies upon the subjective interpretation of the expert;
> (3) whether the theory has been subjected to peer review and/or publication;
> (4) the technique's potential rate of error;
> (5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
> (6) the non-judicial uses which have been made of the theory or technique.

923 S.W.2d at 557 (internal citations omitted). "These factors may not be [sic] apply to certain types of testimony, but there must be some basis for the opinion offered to show its reliability." *In re S.E.W.*, 168 S.W.3d at 884. "Expert testimony is unreliable if the court concludes 'there is simply too great an analytical gap between the data and the opinion proffered.'" *Twin City Fire Ins. Co. v. Vega-Garcia*, 223 S.W.3d 762, 771 (Tex. App.—Dallas 2007, pet. denied) (quoting *Gammill*, 972 S.W.2d at 726.).

i. Money, Medcost, and Explanation of Review

Money is founder the CEO of Medcost, a company that prepares an "Explanation of Review" (EOR) document and counteraffidavits for doctors. Here, Medcost prepared separate EORs for two providers: Daytime Outpatient Surgery Center and STAR Medical Center. The EORs do not indicate an author. The EORs

use "Current Procedural Terminology" (CPT) codes—which "are uniform codes for medical, surgical, and diagnostic services that have been developed and published by the American Medical Association and are standardized throughout the country." *In re Allstate Indem. Co.*, 622 S.W.3d at 874 n. 2. The EORs also include reductions based on Medcost's "reduction codes." Money testified the reduction codes were used with information he gathers from various databases to determine a "usual, customary, and reasonable" (UCR) amount routinely charged by health care providers.

However, it is evident from the EORs and Money's testimony that the Medcost analysis is not consistent for each medical procedure or provider. The record shows that (i) several procedures were analyzed without the use of a CPT code and were instead "assigned per available description"; (ii) certain procedures have less comparison and analysis based on the data available to Medcost (as calculated between values in the 75% percentile, in-network charges, and Medicare); (iii) the procedures are subject to different reduction code methodologies; (iv) certain procedures are deemed to have reasonable billed charges because the billed charge is lower than Medicare; and (v) the UCRs are not consistently calculated—with certain values miscalculated pursuant to the EOR's reduction code explanations and with certain values rounded differently to a whole or decimal number.

Medcost prepared counteraffidavits for Dr. Duval and Dr. Patel, based upon the EORs. Dr. Patel testified that he did not know who authored the EOR or whether the author was qualified to opine on billing or coding. Apart from verification of Medicare values, Dr. Patel testified he relied upon the EOR and counteraffidavit to have pulled the values "appropriately from Fair Health." Dr. Patel testified he did not know why the values from Medcost's EOR used different reduction codes for different CPT codes.

When asked about the reduction codes and according calculations for the values on his EOR and counteraffidavit, Dr. Duval testified that he didn't know. When asked about his own independent research for the EOR and counteraffidavit, Dr. Duval testified (i) that he did not do any independent research on the values on the EOR and counteraffidavit and (ii) that "these are provided from—apparently from Fair Health Data."

ii. Use of the Term "Charge"

Money, Duval and Patel all use the term "charge" throughout their testifying documents. During the hearing, Oliver asserted a distinction between how Money uses the term "charge" and how Dr. Duval and Dr. Patel use the term "charge." Money testified that he "[had] not had formal training" related to medical billing. Money testified as to his use of the terms usual and customary rate (UCR) and charge as follows:

[Q]: . . . What does it mean when you're using the term "UCR"? What does the word "customary" mean in that?
MONEY: Well, customary would be the amount charged by other health care providers in the same geographic region for the same service, same or similar service. And then just to bounce into reasonable, when a charge is both usual and customary, it is reasonable.
[Q]: . . . A customary amount charged by other health care providers in the same geographic region. Is that what you said?
MONEY: For the same or similar service. Yes.
[Q]: All right. And then what does "reasonable" mean in this context?
MONEY: It would mean that the charge was both usual and customary.

. . . .

[Q]: We looked at a number of providers that use the term "charged" to mean the billed amount.
[MONEY]: Yes.
[Q]: And we've discussed that the AMA uses the term "charge" to mean the billed amount.
[MONEY]: Well, not all the time. I mean, we did discuss that they use that word "charged" as the billed amount in reference to their policy that we discussed. But they use the word interchangeably, as do health care providers. But on the statements we looked at, the heading Charges was in reference to the amount that those providers billed for their services.
[Q]: All right. And so *if these providers are saying that those billed amounts are reasonable, you wouldn't have an opinion one way or another on if those are reasonable billed amounts in the way that they're using that term*.
[MONEY]: *Well, I mean, I'm not asked for my opinion in that regard. I'm not hired to give an opinion in that regard*. I'm certainly qualified to give an opinion in that regard. So I'm not sure what you're asking.
[Q]: What I'm asking, and what I'm really drilling down on, is that *the way we see the term "charge" used on all of these bills is different than the way you're using the term "charge" in your controverting affidavit*[.]
[MONEY]: *Yes. I believe that is accurate*.

. . . .

> [Q]: And *you're not offering any opinion on whether it was reasonable for these providers to bill at the rates they billed*.
> MONEY: *No. I was not hired for that purpose and I did not evaluate for that explicitly and I didn't offer an opinion on that*.
> [Q]: And you're not offering any opinion on what these providers have a right to be paid.
> MONEY: Correct . . . . My opinion is the amount that would be reasonable to charge a self-payer for the services.
> [Q]: *And using "charge" in the context—that context, meaning the amount that they would expect to get paid; not the billed amount, which is a different number, typically*.
> MONEY: *Correct*. And my opinion in relation to providers' billed charges would be as it was analyzed in comparison to what amount is reasonable.

(emphasis added). However, when asked about the term "charge," Dr. Duval testified:

> [Q]: All right. *I understand that the amount charged is what is billed without regard to any adjustment on contracted rate*.
> [DR. DUVAL]: Okay
> [Q]: Does that—*do we agree with that definition*?
> [DR. DUVAL]: I've never really called anything a chargemaster rate, but *what's billed is the charges*, I guess, that—for the services provided[.]

(emphasis added). When asked about the term "charge," Dr. Patel testified:

> [Q]: . . . *Do we agree that, in the medical context, the amount charged and the reimbursement rates are two different things*?
> [DR. PATEL]: *Yes*.
> [Q]: Okay. *And the charge would be the amount that is billed without regard to any adjustments, contracted rates, sometimes called the listmaster or chargemaster rate*?
> [DR. PATEL]: *Yes*.
> [Q]: *Okay. And then the reimbursement rate is the amount that's actually paid after all adjustments*?
> [DR. PATEL]: *Yes*.

(emphasis added). Thus, it is evident from the record that (i) Money's analysis of a "charge" refers to the amount a provider expects to get paid, after adjustments[1] and (ii) Dr. Patel and Dr. Duval understand the term "charge" to refer to the billed amount, without regard to any adjustment. That is, Dr. Patel and Dr. Duval understood the provider's "charge" as the unadjusted rate, but Money presented the "charge" as the adjusted rate.

Relators argue that such methodology is reliable under *In re Allstate*—asserting before the trial court that "if evaluating the database and providing the numbers in the database, if that is not a reliable way . . . to provide evidence of reasonable, customary, and usual medical expenses, then the [Texas] Supreme Court would have told us that in *In re Allstate*." Relators further assert Money may testify under *Gunn v. McCoy*, arguing that Money is as qualified as the subrogation agent in *Gunn*. 554 S.W.3d 645, 674 (Tex. 2018) (discussing, as to the subrogation agent, controverting affidavits under Texas Civil Practice and Remedies Code § 18.001).

However, the Texas Supreme Court explicitly distinguished the qualifications analysis under § 18.001—which was the pertinent issue in both *In re Allstate* and the subrogation agent's testimony in *Gunn*—from a reliability analysis, pertinent to a challenge to an expert under Texas Rule of Evidence 702:

> *Nothing in the text of section 18.001(f) requires that an opinion expressed in a counteraffidavit must meet the admissibility*

[1] Indeed, Money's explanation of review specifically indicates that the "UCR" figures on his explanation of review documents exclude "charge discounts."

> *requirements for expert testimony*. Alaniz points to the phrase "to testify" in the second sentence of section 18.001(f). However, *the plain text focuses* not on the substance of the testimony, but *only on the qualifications of the affiant*. TEX. CIV. PRAC. & REM. CODE § 18.001(f). *Whether a witness is qualified to provide expert testimony and whether the expert's testimony is reliable are distinct inquiries*. *See, e.g., Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001) ("A two-part test governs whether expert testimony is admissible: (1) the expert must be qualified; and (2) the testimony must be relevant and be based on a reliable foundation.").
>
> . . . .
>
> The trial court erred by importing a reliability requirement into its section 18.001 analysis.

In re Allstate Indem. Co., 622 S.W.3d at 880 (emphasis added). Furthermore, the Texas Supreme Court noted by footnote that its

> holding is limited to counteraffidavits submitted under section 18.001 for the purpose of controverting a claimant's affidavit on the reasonableness and necessity of services and their costs. We do not address the standards for testing affidavits offered for some other evidentiary purpose.

In re Allstate Indem. Co., 622 S.W.3d at 880 n. 8. In both *In re Allstate* and *Gunn*, the Texas Supreme Court limited its according discussions to affidavits filed under § 18.001. *Id.*; *Gunn*. 554 S.W.3d at 674 ("We reiterate that an affidavit served under section 18.001 is 'purely procedural' and does not amount to conclusive evidence of the expenses.").[2] The Texas Supreme Court further explained that § 18.001

[2] Regarding § 18.001, the Texas Supreme Court has recently cured the virus *Beauchamp v. Hambrick* introduced into the Texas judicial system by adding an extratextual third consequence to § 18.001—improperly instructing trial courts to exclude "evidence to the contrary, upon proper objection, in the absence of a properly-filed counteraffidavit.'" *In re Allstate Indem. Co.*, 622 S.W.3d at 881–82 (quoting *Beauchamp v. Hambrick*, 901 S.W.2d 747, 749 (Tex. App.—Eastland 1995, no writ)). The Texas Supreme Court explained:

counteraffidavits are not assessed as expert testimony under Rule 702. *In re Allstate Indem. Co.*, 622 S.W.3d at 880. ("[D]etermining whether a counteraffidavit meets section 18.001(f)'s reasonable-notice standard does not require a court to assess reliability of the expert's opinions under Rule 702 or Robinson.").

Thus, the Texas Supreme Court's opinion in *In re Allstate* (i) explicitly excludes reliability assessment for a § 18.001 counteraffidavit; (ii) provides no guidance as to whether the nurse expert's methodology in that case—relying on databases—was reliable; and (iii) specifically limits the application of its holding "to counteraffidavits submitted under section 18.001." *See id*. In short, the analysis of whether Money's methodology was reliable under Texas Rule of Evidence 702 is unaffected by the § 18.001 analysis in *In re Allstate*. *Id.* Relators are comparing apples to oranges. In *In re Allstate*, the nurse provided a counteraffidavit under

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> As this Court explained in *Haygood v. De Escabedo*, section 18.001 is a "purely procedural" statute that is designed to "streamline proof of the reasonableness and necessity of medical expenses." 356 S.W.3d 390, 397 (Tex. 2011). In the absence of a proper controverting affidavit, section 18.001(b) merely provides that a claimant may rely on an affidavit setting forth the necessity and reasonableness of medical expenses to avoid adducing expert testimony on those issues at trial, and, if she does so, the affidavit "is sufficient evidence to support a finding of fact ... that the amount charged was reasonable or that the service was necessary." TEX. CIV. PRAC. & REM. CODE § 18.001(b). While an uncontroverted section 18.001(b) affidavit may constitute sufficient evidence of reasonableness and necessity, nothing in section 18.001 even suggests an uncontroverted affidavit may be conclusive on reasonableness and necessity. *There is no textual support for the assertion that the absence of a proper counteraffidavit constitutes a basis to constrain the defendant's ability to challenge—through evidence or argument—the claimant's assertion that her medical expenses are reasonable and necessary. The claimant's decision to file initial affidavits may relieve her of the burden to adduce expert trial testimony on reasonableness and necessity, but the opposing party's failure to serve a compliant counteraffidavit has no impact on its ability to challenge reasonableness or necessity at trial.*

In re Allstate Indem. Co., 622 S.W.3d at 881 (emphasis added).

§ 18.001 in her capacity as a qualified affiant "intending to controvert a claim." TEX. CIV. PRAC. & REM. CODE ANN. § 18.001(f); *In re Allstate Indem. Co.*, 622 S.W.3d at 876–80. In *Gunn*, the subrogation agent provided an affidavit under § 18.001 in the agent's capacity as a qualified affiant providing "evidence of the reasonableness and necessity of past medical expenses." *Gunn v. McCoy*, 554 S.W.3d 645, 672 (Tex. 2018) (citing CIV. PRAC. & REM. § 18.001(b)). Here, Oliver has not sought to strike Money, Dr. Duval, and Dr. Patel under § 18.001. Instead, Oliver has sought to strike these witnesses in their capacity as *experts*, seeking to proffer *expert opinion*. *See* TEX. R. EVID 702. In my view, if an § 18.001 affiant provides expert testimony, that expert opinion is subject to the trial court's scrutiny under Rule 702 as a "gatekeeper." *See id.*; *TXI Transp. Co.*, 306 S.W.3d at 235. Simply because an affidavit is proffered under § 18.001 does not signify that § 18.001 affidavit meets the requirements of Rule 702.

Issue Two: Whether Relators Have No Adequate Remedy at Law

Relators assert, relying on *In re Allstate*, that mandamus relief is required because the trial court's orders severely compromised relators' defense. Regarding whether an adequate remedy at law existed in *In re Allstate*, the Texas Supreme Court explained:

> An appeal is not an adequate remedy when "the party's ability to present a viable claim or defense at trial is vitiated or severely compromised" by the trial court's error. *Walker*, 827 S.W.2d at 843. The trial court's order not only precludes Allstate from presenting its own evidence regarding the reasonableness of Alaniz's medical

> expenses, but it also prohibits Allstate from challenging Alaniz's evidence through cross-examination or jury argument. The trial court's order would preclude Allstate from engaging in meaningful adversarial adjudication of Alaniz's claim for payment of medical expenses, vitiating or severely compromising Allstate's defense. Mandamus relief is therefore appropriate.

In re Allstate Indem. Co., 622 S.W.3d at 883.

Unlike the orders from *In re Allstate*—which prohibited Allstate "from questioning witnesses, offering evidence, or arguing to the jury the 'reasonableness of the medical bills' that [plaintiff] has submitted by affidavit to date"—the trial court's orders in this instant case are not such that relators' ability to present a viable defense at trial is vitiated or severely compromised. *Walker*, 827 S.W.2d at 843. Here, relators retain the ability to present their own evidence regarding the reasonableness of Oliver's medical expenses. Unlike *In re Allstate*, the trial court did not preclude relators from challenging Oliver's evidence through cross-examination or jury argument. Relators suggest that they were prohibited from introducing evidence to contradict Oliver's affidavits, but (i) the trial court entered no such order and (ii) the trial court did not strike relators' counteraffidavits filed under § 18.001.

Relators' complaint is with the trial court's decision to exclude expert evidence under Texas Rule of Evidence 702. *In re Flores*, No. 05-19-01058-CV, 2020 WL 2847531, at *1 (Tex. App.—Dallas June 2, 2020, no pet.) ("The trial court's ruling on the admissibility of expert testimony is commonly reviewed on

direct appeal for an abuse of discretion."); *see, e.g.*, *United Rentals N. Am., Inc. v. Evans*, 608 S.W.3d 449, 473 (Tex. App.—Dallas 2020, pet. filed) (discussing, on appeal, whether a trial court abused its discretion in overruling objection to expert testimony); *Spin Doctor Golf, Inc.*, 296 S.W.3d at 360 (discussing, on appeal, whether the trial court abused its discretion in excluding an expert witness from evidence). Indeed, this case is comparable to *In re Flores*, in which we explained:

> The trial court's order does not terminate relators' defense. In fact, the order has trimmed the case to its essence and does not leave relators without an adequate remedy on appeal. Rather, "relators simply face the non-unique burden of having to adjust their trial strategy to accommodate an adverse evidentiary ruling."

In re Flores, 2020 WL 2847531, at *2 (quoting *In re Flores*, 597 S.W.3d 533, 537 (Tex. App.—Houston [1st Dist.] 2020, no pet.)).

V. CONCLUSION

I concur in denying relators' petition for writ of mandamus.

/Bill Pedersen, III/
BILL PEDERSEN, III
JUSTICE

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