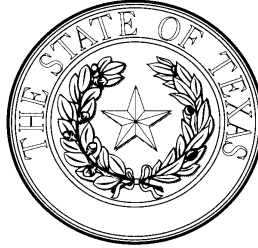


Opinion issued September 2, 2021



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-20-00672-CV

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**KARAN SURINDER BHALLA, M.D., PLLC, Appellant**

V.

**SYLVIA SORIA, Appellee**

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**On Appeal from the 129th District Court  
Harris County, Texas  
Trial Court Case No. 2019-79407**

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**MEMORANDUM OPINION**

In this healthcare-liability claim, appellant, Karan Surinder Bhalla, M.D., PLLC, challenges the trial court's orders denying his motion to dismiss and granting a motion for an extension to file an expert report sought by appellee, Sylvia Soria.

In his sole issue on appeal, Bhalla argues that the trial court abused its discretion because the evidence in support of the motion for extension did not show that the COVID-19 pandemic caused the need for the extension.

We dismiss for lack of jurisdiction.

### **Background**

On September 1, 2017, Soria went to Bhalla's medical office to have a cardiac stress test to clear her for cancer surgery. A nurse practitioner attempted to administer a treadmill stress test and asked Soria to step onto a treadmill. When she could not keep pace with the speed of the treadmill, Soria fell and fractured her left arm.

Soria sued Bhalla, alleging negligence in failing to properly administer a treadmill stress test. Bhalla answered, generally denying the allegations. Pursuant to section 74.351,<sup>1</sup> Soria timely filed an expert report of Spring Bucior, a registered nurse. Bhalla objected to Bucior's expert report and sought to dismiss because Bucior did not demonstrate the necessary expertise to provide opinions about a nurse administering a treadmill stress test. Bhalla also objected that her report was "no report" because she was not a physician who could render an opinion on causation. Because he claimed that Bucior's report was no report at all, Bhalla argued that the

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<sup>1</sup> See TEX. CIV. PRAC. & REM. CODE § 74.351(a) (requiring plaintiff to serve expert report within 120 days after defendant's original answer is filed).

expert report could not be cured by a 30-day extension<sup>2</sup> and that the trial court had to dismiss the suit because Soria failed to serve an expert report within the deadline required by section 74.351.

On June 17, 2020, Soria filed an expert report of Dr. Keith Schauder and a combined motion requesting a motion for extension of time to file Dr. Schauder's report and responding to Bhalla's objections and motion to dismiss. Soria explained that due to Bhalla's delay in providing her medical records and the "unprecedented impact of the COVID-19 virus, [Soria] was unable to secure expert reports . . . prior to the statutory deadline." Soria further explained that she provided formal notice of her claim on August 26, 2019 and requested her medical records. Despite her request, Soria did not receive her medical records from Bhalla until February 7, 2020.<sup>3</sup>

Soria acknowledged that her expert report deadline was April 3, 2020, or 120 days after Bhalla filed his answer, which occurred on December 5, 2019. After she received her medical records, Soria forwarded them to her nursing expert, Bucior, but "news of the COVID-19 virus was prevalent in Galveston and Harris Counties

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<sup>2</sup> *See id.* § 74.351(c) (permitting trial court to grant extension for deficient expert report).

<sup>3</sup> *See id.* § 74.051(d) (allowing parties to obtain medical records within 45 days from date of receipt of written request).

at that time.” Soria explained that her attorney’s office closed beginning on March 2, 2020, the Texas Governor issued a disaster proclamation on March 13, 2020, and the Galveston County Judge issued a “stay-at-home” order on March 24, 2020. Soria further stated that on March 24, she asked Bhalla for an extension of the expert-report deadline “in light of the stay-at-home order and the virus’s impact on communications between [Soria’s] Counsel and medical experts,” but Bhalla refused the extension request. Soria also relied on the Texas Supreme Court’s Seventeenth emergency order in support of her request for an extension.<sup>4</sup>

Soria further argued that the trial court should deny Bhalla’s objections to Bucior’s expert report because her report met the standard of care and it was a good faith effort to comply with Chapter 74.

Michael Henderson Jr., Soria’s attorney, submitted an affidavit with the motion for extension to file Dr. Schauder’s expert report. Henderson averred that after he received Soria’s medical records on February 7, 2020, he forwarded them to Bucior for review, his office closed due to concerns about COVID-19 on March 2, and he was unable to reach Bucior despite multiple attempts. Because of

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<sup>4</sup> The Seventeenth emergency order provided, “Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent: a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than September 30, 2020.” *Seventeenth Emergency Order Regarding COVID-19 State of Disaster*, 609 S.W.3d 119 (Tex. 2020).

communication difficulties caused by the virus, the stay-at-home orders in Galveston County, and his belief that Bucior was pre-occupied with virus-related hospital work, Henderson asked Bhalla for an extension to file an expert report, but his request for an extension was denied.

On July 8, 2020, Bhalla objected to Dr. Schauder's expert report, arguing that his opinions were mere conclusions and that the expert report was not timely served. A few days later, Bhalla responded to Soria's motion to extend time to file Dr. Schauder's expert report, arguing that Soria's stated excuse—needing additional time because she did not receive medical records timely—was not a valid excuse. Bhalla further argued that Soria's reliance on the Texas Supreme Court's emergency order "as a blanket extension of time of all deadlines" was "not the proper way to interpret the order. Plaintiff must show that COVID-19 caused the delay in securing a Chapter 74 report to secure an extension of the Chapter 74 deadline." Bhalla maintained that prior cases "interpreting similar orders in effect during Hurricanes Rita and Harvey . . . required evidence of the disaster's impact on [Soria's] ability to meet a deadline. . . ." Bhalla claimed that Soria did not provide any evidence that COVID-19 was the reason for Soria's failure to meet the Chapter 74 expert report deadline.

The trial court held a hearing on Bhalla's motion to dismiss and Soria's motion to extend time to file an expert report. At the conclusion of the hearing, the

trial court deferred ruling on the motions and requested that Soria file supplemental evidence to support her need for the extension and whether it was caused by COVID-19. After Soria filed supplemental evidence in support of her motion for extension of time to file Dr. Schauder's expert report, Bhalla responded that it was the "firm's decision in working up the case that prevented [Soria] from timely providing a Chapter 74 report from a physician, not COVID-19."

On September 5, 2020, the trial court issued an order stating, "Pursuant to the Texas Supreme Court's Twenty-Second Emergency Order,<sup>5</sup> and in the interest of the safety and welfare of the parties, counsel, witnesses and the public amid the ongoing COVID-19 public health crisis, the Court modifies and suspends the deadline for filing of Plaintiff's expert reports under the Texas Civil Practice & Remedies Code 74.351 until July 13, 2020." On the same day, the trial court overruled Bhalla's objections to Bucior's expert report and denied Bhalla's motion to dismiss.

Bhalla filed a timely notice of appeal pursuant to section 51.014(a)(9).<sup>6</sup>

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<sup>5</sup> At the time the trial court issued its order, the supreme court's twenty-second emergency order was in effect. *See Twenty-Second Emergency Order Regarding COVID-19 State of Disaster*, 609 S.W.3d 129 (Tex. 2020). The twenty-second order contains the same provision provided in the seventeenth emergency order, permitting the trial court to "modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than September 30, 2020." *See id.*

<sup>6</sup> Section 51.014(a)(9) allows an interlocutory appeal that "denies all or part of the relief sought by a motion under Section 74.351(b), except an appeal may not be taken from an order granting an extension under Section 74.351." TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).

## Jurisdiction

As a threshold matter, Soria argue that this Court lacks jurisdiction to consider Bhalla’s appeal because no appeal may be taken from an order granting an extension under section 74.351. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).

Responding to the jurisdictional argument in his reply brief, Bhalla contends that we have jurisdiction because the order denying his motion to dismiss is an appealable order pursuant to section 51.014(a)(9).<sup>7</sup> Bhalla further argues that the trial court’s order was “not an order granting a 30-day extension under Section 74.351 to cure deficiencies in her report, but rather an extension of the Chapter 74 report deadline itself.”

Generally, appellate courts have jurisdiction to hear immediate appeals of interlocutory orders only when a statute explicitly provides for such jurisdiction. *Stary v. DeBord*, 967 S.W.2d 352, 352–53 (Tex. 1998). An interlocutory appeal may be taken from an order that “denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351.” TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9); *see also id.* § 74.351(b), (c).

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<sup>7</sup> *See id.*

Thus, no immediate interlocutory appeal may be taken from an order denying a motion to dismiss if the trial court also grants an extension to cure deficiencies. *See Scoresby v. Santillan*, 346 S.W.3d 546, 555 (Tex. 2011) (noting no immediate interlocutory appeal from order denying motion to dismiss that also grants 30-day extension to cure deficiencies because appellate courts addressing sufficiency of report while its deficiencies were “presumably being cured at the trial court level” constitutes an “illogical and wasteful result”); *Ogletree v. Matthews*, 262 S.W.3d 316, 321 (Tex. 2007) (“[T]he actions denying the motion to dismiss and granting an extension are inseparable. . . . The statute plainly prohibits interlocutory appeals of orders granting extensions. . . .”); *Bogar v. Esparza*, 257 S.W.3d 354, 361 (Tex. App.—Austin 2008, no pet.) (holding that court of appeals could not reach merits of motion to dismiss because trial court also granted extension). If, after an extension has been granted, the defendant again moves to dismiss, then the denial of the motion is appealable. *Scoresby*, 346 S.W.3d at 555.

Neither party disputes that the trial court’s orders are interlocutory. Thus, we must have statutory authority for an interlocutory appeal. *See Stary*, 967 S.W.2d at 352–53. Although Bhalla contends that section 51.014(a)(9) provides this Court with appellate jurisdiction, that section specifically states that “an appeal may not be taken from an order granting an extension under section 74.351.” *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9). Here, the trial court’s September 25 order states



that it was modifying and suspending the deadlines in section 74.351 until July 13, 2020. Although the order does not state that it was “granting an extension,” the practical effect of the order granted Soria an extension of time to file an additional expert report. Based on the plain language of the trial court’s order, we conclude that the trial court’s September 5 order is indeed an interlocutory order granting an extension under section 74.351. *See Reiss v. Reiss*, 118 S.W.3d 439, 441–42 (Tex. 2003) (stating that courts must construe trial court orders based on their unambiguous language); *Estate of Hoskins*, 501 S.W.3d 295, 304–05 (Tex. App.—Corpus Christi–Edinburg 2016, no pet.) (construing court orders according to their “plain terms”). Because the legislature has provided that an appeal may not be taken from an order granting an extension under section 74.351, we lack jurisdiction over this appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).

Although Bhalla is correct that we have jurisdiction over the denial of a motion to dismiss pursuant to section 74.351, when the trial court also grants an extension pursuant to section 74.351, our jurisdiction is lacking until Bhalla files a second motion to dismiss.<sup>8</sup> *See Scoresby*, 346 S.W.3d at 555; *Ogletree*, 262 S.W.3d at 321; *Bogar*, 257 S.W.3d at 361.

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<sup>8</sup> The appellate record demonstrates that while Bhalla filed a motion to dismiss based on Bucior’s expert report, he did not move to dismiss based on Dr. Schauder’s expert report.

## **Conclusion**

We dismiss the appeal for lack of jurisdiction.

Sherry Radack  
Chief Justice

Panel consists of Chief Justice Radack and Justices Landau and Countiss.