Opinion issued August 16, 2022.

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00577-CV

GARY HORNDESKI M.D., Appellant

V.

CHERYL PRICE, Appellee

On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Case No. 111019-CV

MEMORANDUM OPINION

In this interlocutory appeal, Appellant Gary Horndeski, M.D. ("Dr. Horndeski") challenges the trial court's order denying his motion to dismiss Appellee Cheryl Price's health care liability claim. In two issues, Dr. Horndeski contends the trial court abused its discretion in denying his motion to dismiss

because Appellant's original and supplemental expert reports fail to (1) provide a sufficient opinion on the applicable standard of care and alleged breach of that standard and (2) adequately set forth a causal chain linking the purported breaches of the standard of care with Appellant's alleged harm. We reverse and remand.

Background

Appellee Cheryl Price ("Price") suffered from left breast cancer in 1995. She had "bilateral mastectomies followed by delayed breast cancer reconstruction with implants in 1999." She subsequently "developed an exposure and had the bilateral implants removed." She alleges in her petition that in 2019, she "presented to Dr. Horndeski for care and treatment to remove excess skin under each arm after [her] breast cancer surgery . . . ." On March 5, 2019, Dr. Horndeski performed a "Bellasoma" breast reconstruction surgery on Price to remove the excess skin. Price alleges that shortly after the surgical procedure, she developed bilateral blisters and pustules on her skin and infections that required three operative debridements of her breasts, wound care, and oral antibiotic therapy.[1] Price also alleges that following the surgical procedure, there was "evidence of unauthorized complete bilateral breast reconstruction and infection."

On January 4, 2021, Price filed a health care liability suit against Dr. Horndeski alleging he "was negligent in providing appropriate and timely medical

[1] Although it is unclear when Price developed these issues, the record reflects she exhibited them by the time her proposed expert, Dr. Leo Lapuerta, examined her on May 28, 2019.

care and treatment to [her] while she was his patient and breached his duty to provide the standard of care in restoring and treating [her]." Price alleged Dr. Horndeski was negligent in failing to (1) obtain her consent to perform the subject procedure; (2) meet the standard of care in performing the unauthorized breast reconstruction; (3) make a reasonable attempt to address her high-risk surgical candidacy for breast reconstruction; (4) recognize that his skills, knowledge or facilities were inadequate to properly treat Price under the circumstances as they then existed, (5) adhere to the acceptable standards for care in the medical profession by performing a "Bellasoma" procedure for breast reconstruction when it was inappropriate; and (6) protect her from possible infection after performing the procedure.

Pursuant to Section 74.351 of the Texas Civil Practice and Remedies Code, Price filed and served upon Dr. Horndeski an expert report authored by Leo Lapuerta, M.D., F.A.C.S., a board-certified plastic surgeon and Chief of Plastic Surgery at St. Joseph Hospital ("Dr. Lapuerta"), which she attached as Exhibit A to her petition. Dr. Lapuerta, who conducted a physical examination of Price on May 28, 2019, stated, in pertinent part:

> [Price] has a history of a left breast cancer in 1995. She had bilateral mastectomies followed by delayed breast reconstruction with implants in 1999 and developed an exposure and had the bilateral implants removed. She also had a latissimus flap in the past. She had some other type of breast procedure in 2000 as well. Her past medical history includes a colon resection complicated by severe healing

problems, hypertension, chest pain, thyroid problems, hiatal hernia, chemotherapy and radiation for her breast cancer, 3 c sections, a hysterectomy and cholecystectomy, as well as incisional hernia repair. She recently had a procedure performed on the breasts on March 5, 2019 by Dr. Horndeski consisting of a "bellasoma" breast reconstruction with some type of internal suturing methods. She was referred to me by Dr. Ted Kovacev in Lake Jackson, TX because of continued healing problems with large blisters and infections in the breasts.

In his report, Dr. Lapuerta provided the following opinions:

ACCEPTED STANDARD OF CARE FOR MS. PRICE

In my opinion, Mrs. Price has an extensive and complicated medical and surgical history with a history of healing problems and she was not a candidate for any type of breast reconstruction. She had some type of procedure performed by Dr. Horndeski in March 2019 complicated by multiple infested pustules and required three operative debridements and wound care with oral antibiotic therapy to eventually heal.

DEPARTURE FROM ACCEPTED STANDARD OF CARE BY DR. HORNDESKI

In my opinion, the procedure recommended and carried out by Dr. Horndeski on March 5, 2019 departed from and was below the accepted standard of care in the following respects:

1. Mrs. Price was and remains a very high risk surgical candidate which precludes any breast reconstruction.

> 2. The procedure performed consisting of a "bellasoma" reconstruction and explained at www.horndeski.com is not the standard of care in breast reconstruction in the community and led to pustule formation and retained foreign bodies in the breasts which required several more operations by myself, Dr. Kovacev and Dr. Wegge to control.

Dr. Horndeski answered generally denying the allegations in Price's petition. Then, on March 8, 2021, he filed objections to the sufficiency of Dr. Lapuerta's Chapter 74 expert report. Dr. Horndeski argued the report failed to meet Chapter 74's requirements because (1) no curriculum vitae was provided, (2) the report was based entirely on speculation, was wholly conclusory, and so insufficient that it constituted "no report" as to him, (3) the report was insufficient to establish any standard of care or breach on his part, (4) the report asked the trial court to consider material outside the four corners of the report, and (5) the report failed to explain the causal connection between the purported breaches in the standard of care and Price's alleged injuries. Dr. Horndeski further asserted that "Dr. Lapuerta expressly assume[d] that a bad result [was] proof of negligence and use[d] backwards reasoning from this conclusion to form the basis of his opinion."

On June 11, 2021, Price filed and served upon Dr. Horndeski a supplemental expert report authored by Dr. Lapuerta. The supplemental report was identical to the original in all respects except that Dr. Lapuerta added the following paragraph:

> I have reviewed the aforesaid medical records and based upon my experience and training, it was below the standard of care for the defendant plastic surgeon, Dr. Horndeski, to perform the surgery on

> Ms. Price. Under reasonable medical probability had he simply refrained from performing the procedure, Ms. Price would not have sustained the disfigurement she complains of and all of the subsequent procedures would have been avoided.

Dr. Horndeski filed objections to Dr. Lapuerta's supplemental report. He argued the supplemental report failed to cure the deficiencies of Dr. Lapuerta's original report and failed to meet the statutory requirements set forth in Chapter 74. Dr. Horndeski reasserted his previous objections except for his objection to the lack of a curriculum vitae, which Dr. LaPuerta had corrected.[2]

On September 2, 2021, Dr. Horndeski moved to dismiss Price's suit on the ground that Dr. Lapuerta's reports failed to satisfy the requirements of Chapter 74. Price responded to the motion asserting that Dr. Lapuerta's reports constituted a "good faith" effort to satisfy Chapter 74 because they adequately set forth the elements of standard of care, breach, and causation. Price argued that her allegations were simple: "Dr. Horndeski should not [have] performed any type of reconstructive surgery on [Price] and, to do so, was below the standard of care," causing Price to "suffer disfigurement and several more surgical procedures."

On October 5, 2021, the trial court denied Dr. Horndeski's motion to dismiss. This appeal ensued.

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[2] On February 23, 2021, Price's counsel faxed the same expert report to Dr. Horndeski's counsel, referring to it as the "Curriculum Vitae and Expert Report of Leo Lapuerta, M.D., F.A.C.S." The report includes Dr. Lapuerta's educational and profession background, licensure, board certifications, and privileges and appointments.

Expert Reports

On appeal, Dr. Horndeski challenges the trial court's order denying his motion to dismiss Price's health care liability claim against him. He argues that Dr. Lapuerta's original and supplemental expert reports are deficient because they do not adequately address the applicable standard of care, breach, and causation.

A. Standard of Review

We review a trial court's decision on a motion to dismiss a health care liability claim for an abuse of discretion. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001); *Pinnacle Health Facilities XV, LP v. Chase*, No. 01-18-00979-CV, 2020 WL 3821077, at *5 (Tex. App.—Houston [1st Dist.] July 7, 2020, no pet.) (mem. op.). When reviewing matters committed to a trial court's discretion, we may not substitute our own judgment for that of the trial court. *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002). A trial court does not abuse its discretion merely because it decides a discretionary matter differently than an appellate court would in a similar circumstance. *Harris Cty. Hosp. Dist. v. Garrett*, 232 S.W.3d 170, 176 (Tex. App.—Houston [1st Dist.] 2007, no pet.). But a trial court 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). A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to guiding rules or

principles. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010). We conduct our review keeping in mind that Chapter 74 expert reports are required to deter baseless claims, not to block earnest ones. *Jackson v. Kindred Hosps. Ltd. P'ship*, 565 S.W.3d 75, 81 (Tex. App.—Fort Worth 2018, pet. denied); *Gonzalez v. Padilla*, 485 S.W.3d 236, 242 (Tex. App.—El Paso 2016, no pet.); *see also Scoresby v. Santillan*, 346 S.W.3d 546, 554 (Tex. 2011).

B. Applicable Law

Under the Texas Medical Liability Act ("TMLA"), a health care liability claimant must "serve on each party, or the party's attorney, one or more expert reports with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted" to substantiate her claims. TEX. CIV. PRAC. & REM. CODE § 74.351(a); *see E.D. by & through B.O. v. Tex. Health Care, P.L.L.C.*, 644 S.W.3d 660, 662 (Tex. 2022); *Abshire v. Christus Health Se. Tex.*, 563 S.W.3d 219, 223 (Tex. 2018). The statute defines an "expert report" 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 (1) the applicable standards of care, (2) the manner in which the care rendered by the defendant physician or health care provider failed to meet the standards, and (3) the causal relationship between that failure and the injury, harm, or damages claimed by the plaintiff. *Id.* § 74.351(r)(6); *see E.D. by & through B.O.*, 644 S.W.3d at 662 (citing TEX. CIV.

PRAC. & REM. CODE § 74.351(*l*), (r)(6)). A "fair summary" of the expert's opinions means the report must state more than the expert's mere conclusions on the standard of care, breach, and causation. The report must explain the basis of the expert's opinion so as to link the conclusions to the facts of the case. *See Jelinek*, 328 S.W.3d at 539; *Wright*, 79 S.W.3d at 52.

In assessing the report's sufficiency, the trial court may not draw any inferences; the only information relevant to the inquiry is within the four corners of the document. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 463 & n.14 (Tex. 2008); *Palacios*, 46 S.W.3d at 878-79. Although the report need not marshal all the plaintiff's proof, it must include the expert's opinions on the three statutory elements: standard of care, breach, and causation. *Abshire*, 563 S.W.3d at 223 (citing *Palacios*, 46 S.W.3d at 878–79); *Gray v. CHCA Bayshore L.P.*, 189 S.W.3d 855, 859 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Courts must view the report in its entirety, rather than isolating specific portions or sections, to determine whether it is sufficient. *See Baty*, 543 S.W.3d at 694; *see, e.g., Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 144 (Tex. 2015); *see also Austin Heart, P.A. v. Webb*, 228 S.W.3d 276, 282 (Tex. App.—Austin 2007, no pet.) ("The form of the report and the location of the information in the report are not dispositive.").

An expert report must be served "not later than the 120th day after the date each defendant's original answer is filed." TEX. CIV. PRAC. & REM. CODE

§ 74.351(c). To avoid dismissal, the report must provide enough information as to each required element to constitute an "objective good faith effort." *Palacios*, 46 S.W.3d at 878–79. First, the report must inform the defendant physician or health care provider of the specific conduct the plaintiff questions or about which the plaintiff complains. *E.D. by and through B.O.*, 644 S.W.3d at 664. Second, the report must provide a basis for the trial court to conclude that the plaintiff's health care claims have merit. *Id.* A report that merely states the expert's conclusions as to the standard of care, breach, and causation does not fulfill these two purposes. *Scoresby*, 346 S.W.3d at 556. While the expert report need not use any particular words and may be informal, "bare conclusions will not suffice." *Id*. at 555–56. Rather, the expert must explain the basis of his statements and link his conclusions to the facts. *Garrett,* 232 S.W.3d at 177.

In reviewing the adequacy of an expert report, a trial court may not consider an expert's credibility, the data relied on by the expert, or the documents the expert failed to consider at the pre-discovery stage of the litigation. *See Mettauer v. Noble*, 326 S.W.3d 685, 691–92 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *Gonzalez*, 485 S.W.3d at 245. It is not the trial court's job to weigh the report's credibility; that is, the court's disagreement with the expert's opinion does not render the expert report conclusory. *Abshire*, 563 S.W.3d at 226.

If the plaintiff serves a timely expert report and the defendant physician or health care provider files a motion challenging the report's adequacy, the trial court "shall grant [the] motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report in Subsection (r)(6)." TEX. CIV. PRAC. & REM. CODE § 74.351(l); *see Palacios*, 46 S.W.3d at 877. If an expert report is not served timely "because elements of the report are found deficient, the [trial] court may grant one 30-day extension to the claimant in order to cure the deficiency." TEX. CIV. PRAC. & REM. CODE § 74.351(c).

C. Adequacy of Expert Reports

In his first issue, Dr. Horndeski contends that Dr. Lapuerta's reports do not adequately address the applicable standard of care and the alleged breach of that standard. In his second issue, he argues the reports do not causally link Price's alleged harm to a specific breach of the applicable standard of care.

1. Standard of Care and Breach

Dr. Horndeski argues that Dr. Lapuerta's opinions regarding the statutory elements of standard of care and breach are insufficient because they constitute nothing more than vague assertions and generalized statements. He argues the opinions lack specific information informing him what he did and what he should

have done differently. Price responds that the following portions of Dr. Lapuerta's reports establish the challenged elements of standard of care and breach:

ACCEPTED STANDARD OF CARE FOR MS. PRICE

> In my opinion, Mrs. Price has an extensive and complicated medical and surgical history with a history of healing problems and she was not a candidate for any type of breast reconstruction. She had some type of procedure performed by Dr. Horndeski in March 2019 complicated by multiple infested pustules and required three operative debridements and wound care with oral antibiotic therapy to eventually heal.

DEPARTURE FROM ACCEPTED STANDARD OF CARE BY DR. HORNDESKI

In my opinion, the procedure recommended and carried out by Dr. Horndeski on March 5, 2019 departed from and was below the accepted standard of care in the following respects:

1. Mrs. Price was and remains a very high risk surgical candidate which precludes any breast reconstruction.

2. The procedure performed consisting of a "bellasoma" reconstruction and explained at www.horndeski.com is not the standard of care in breast reconstruction in the community and led to pustule formation and retained foreign bodies in the breasts which required several more operations by myself, Dr. Kovacev and Dr. Wegge to control.

The standard of care relevant to a healthcare provider is what an ordinarily prudent healthcare provider would do under the same or similar circumstances. *Palacios*, 46 S.W.3d at 880; *Storm v. Mem'l Hermann Hosp. Sys.*, 110 S.W.3d 216, 222 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). "Identifying the standard of care is critical: Whether a defendant breached his or her duty to a patient cannot

be determined absent specific information about what the defendant should have done differently." *Palacios*, 46 S.W.3d at 880 (concluding statement in expert report that precautions to prevent patient's fall from hospital bed were not properly used did not articulate standard of care; neither trial court nor defendant hospital would be able to determine from conclusory statement if expert believed standard of care required hospital to have monitored patient more closely, restrained him more securely, or done something else entirely); *Nw. EMS Consultants, P.A. v. Guillory*, No. 01-19-00668-CV, 2020 WL 4516872, at *7 (Tex. App.—Houston [1st Dist.] Aug. 6, 2020, pet. denied) (mem. op.) (finding expert report conclusory with respect to applicable standard of care where report failed to specifically describe standard of care for transferring patient strapped to stretcher from ambulance to hospital).

For standard of care and breach, the expert report must explain what the defendant physician should have done under the circumstances and what the physician did instead. *Abshire*, 563 S.W.3d at 226 (noting that to identify standard of care adequately expert report must set forth "specific information about what the defendant should have done differently"); *see also Palacios*, 46 S.W.3d at 880 ("The standard of care for a hospital is what an ordinarily prudent hospital would do under the same or similar circumstances."); *Kline v. Leonard*, No. 01-19-00323-CV, 2019 WL 6904720, at *7 (Tex. App.—Houston [1st Dist.] Dec. 19, 2019, pet.

denied) (mem. op.) (noting fair summary of expert's opinion regarding standard of care and breach "must set out what care was expected, but not given"). A report that merely states the expert's conclusions about standard of care and breach is insufficient. *Palacios*, 46 S.W.3d at 880. The report must identify the care that should have been given and it must do so with such specificity that inferences are not needed to discern it. *Guillory*, 2020 WL 4516872, at *7; *see Russ v. Titus Hosp. Dist.*, 128 S.W.3d 332, 340 (Tex.—App. Texarkana, 2004, pet. denied) ("In other words, one must be able to determine from the report what the standard of care required to be done."). A trial court cannot fill in missing gaps in an expert report, draw inferences, or guess what an expert likely meant in his expert report. *Tenet Hosps., Ltd. v. Garcia*, 462 S.W.3d 299, 310 (Tex. App.—El Paso 2015, no pet.); *see also Collini v. Pustejovsky*, 280 S.W.3d 456, 462 (Tex. App.—Fort Worth 2009, no pet.) ("When reviewing the adequacy of a report, the only information relevant to our inquiry is the information contained within the four corners of the document. This requirement precludes a court from filling gaps in a report by drawing inferences or guessing as to what the expert likely meant or intended." (internal citations and footnote omitted)).

Dr. Lapuerta's expert reports are conclusory with respect to both the applicable standard of care and breach. In his supplemental expert report, Dr. Lapuerta states that in his opinion, "Mrs. Price has an extensive and complicated

medical and surgical history with a history of healing problems and she was not a candidate for any type of breast reconstruction. She had some type of procedure performed by Dr. Horndeski in March 2019 complicated by multiple infested pustules and required three operative debridements and wound care with oral antibiotic therapy to eventually heal." Dr. Lapuerta then opines that "[t]he procedure performed consisting of a "bellasoma" reconstruction and explained at www.horndeski.com is not the standard of care in breast reconstruction in the community." These opinions do not articulate a standard of care applicable to a plastic surgeon with respect to breast reconstruction surgery. *See Whitworth v. Blumenthal*, 59 S.W.3d 393, 397 (Tex. App.—Dallas 2001, no pet.) (concluding expert report did not constitute good faith effort to comply with statutory definition of expert report where, among other things, report did "not even attempt to define a standard of care applicable to a surgeon with respect to the utilization of pedicle screws"). "Merely reciting the term 'standard of care,' without setting out or describing what actions or courses of action are encompassed within the standard, does not satisfy the requirement that a report substantively express the applicable standard of care." *Merritt v. Williamson*, No. 01-08-00293-CV, 2008 WL 2548128, at *6 (Tex. App.—Houston [1st Dist.] June 26, 2008, no pet.) (mem. op.).

Dr. Lapuerta's opinion that "[t]he procedure performed consisting of a 'bellasoma' reconstruction and explained at www.horndeski.com is not the standard of care in breast reconstruction in the community" or that "Price has an extensive and complicated medical and surgical history with a history of healing problems and she was not a candidate for any type of breast reconstruction" also fails to state how the Bellasoma procedure violated any particular standard of care or explain with any level of specificity what Dr. Horndeski should have done differently. Dr. LaPuerta does not explain or give a summary of what Dr. Horndeski should have done under the circumstances or "what care was expected, but not given." *See Palacios*, 46 S.W.3d at 880 ("While a 'fair summary' is something less than a full statement of the applicable standard of care and how it was breached, even a fair summary must set out what care was expected, but not given.") (internal quotations omitted); *CHCA Mainland L.P. v. Burkhalter*, 227 S.W.3d 221, 227 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

The reports are thus deficient as to the elements of standard of care and breach.

2. Causation

Dr. Horndeski contends that Dr. Lapuerta's reports are also deficient because they fail to describe the causal connection between Dr. Horndeski's alleged breaches of the applicable standard of care and Price's claimed harm. Price responds that the following italicized portions of Dr. Lapuerta's reports adequately address causation:

> The procedure performed consisting of a "bellasoma" reconstruction and explained at www.horndeski.com is not the standard of care in breast reconstruction in the community and *led to pustule formation and retained foreign bodies in the breasts which required several more operations by myself, Dr. Kovacev and Dr. Wegge to control*.
>
> *Under reasonable medical probability had he simply refrained from performing the procedure, Ms. Price would not have sustained the disfigurement she complains of and all of the subsequent procedures would have been avoided*.

An expert report must provide a "fair summary" of the expert's opinion regarding the causal relationship between the failure of a defendant health care provider to provide care in accord with the applicable standard of care and the plaintiff's claimed injury, harm, or damages. TEX. CIV. PRAC. & REM. CODE § 74.351(r)(6); *E.D. by & through B.O.*, 644 S.W.3d at 663; *Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 630 (Tex. 2013). An expert does not fulfill the statutory requirements by generally opining that the defendant's breach caused an injury. *Jelinek*, 328 S.W.3d at 539. 2010); *Guillory*, 2020 WL 4516872 at *12; *see also Abshire*, 563 S.W.3d at 224 ("A conclusory statement of causation is

inadequate . . . .”). Such a statement is conclusory and provides merely the expert’s *ipse dixit.* *See id.* at 539–40. Instead, the expert report must explain how and why the defendant health care provider’s breach proximately caused the plaintiff’s injury. *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 459–60 (Tex. 2017). Although “magical words” are not required, mere invocation of the phrase “medical probability” does not ensure the report will be found adequate. *Id.* at 540.

Causation consists of two elements: (1) cause-in-fact, and (2) foreseeability. *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018). A defendant physician’s breach was a cause-in-fact of the plaintiff’s injury if the breach was a substantial factor in bringing about the harm, and absent the breach the harm would not have occurred. *Id.* Even if the harm would not have occurred absent the defendant physician's breach, “the connection between the defendant and the plaintiff’s injuries simply may be too attenuated” for the breach to qualify as a substantial factor. *Allways Auto Grp., Ltd. v. Walters,* 530 S.W.3d 147, 149 (Tex. 2017) (internal quotations omitted); *CHCA Clear Lake, L.P. v. Stewart*, No. 01-19-00874-CV, 2021 WL 3412461, at *10 (Tex. App.—Houston [1st Dist.] Aug. 5, 2021, no pet.) (mem. op.). A breach is not a substantial factor if it “does no more than furnish the condition that makes the plaintiff’s injury possible.” *Allways Auto Grp.*, 530 S.W.3d at 149. A defendant physician’s breach is a foreseeable cause of

the plaintiff's injury if a physician of ordinary intelligence would have anticipated the danger caused by the negligent act or omission. *Puppala*, 564 S.W.3d at 197; *CHCA Clear Lake*, 2021 WL 3412461, at *10.

Dr. Lapuerta's reports offer no more than a bare assertion that Dr. Horndeski's purported breaches led to Price's harm. He does not explain how and why Dr. Horndeski's performance of the "Bellasoma" procedure on Price "led to pustule formation and retained foreign bodies in the breast" requiring subsequent procedures. *See Jelinek*, 328 S.W.3d at 539–40 (stating bare assertion that breach resulted in increased pain, suffering, and prolonged hospital stay was inadequate). Dr. Lapuerta makes no attempt to explain the basis of his statements or link his conclusion that the "Bellasoma" procedure led to Price's injuries to any specific facts. *See THN Physicians Ass'n v. Tiscareno*, 495 S.W.3d 599, 614 (Tex. App.—El Paso 2016, no pet.) ("[T]he expert must at a minimum explain the connection between [the health care provider's] conduct and the injury to the [plaintiff]."). Dr. Lapuerta's conclusory statement that, under reasonable medical probability, Price would not have sustained disfigurement had Dr. Horndeski refrained from performing the procedure is mere *ipse dixit*. *See Jelinek*, 328 S.W.3d at 539–40.

From the reports' conclusory language, it is impossible to determine what standard of care was applicable to Dr. Horndeski, how he deviated from the standard of care applicable to him, and whether the alleged deviation is causally

connected to Price's alleged injuries. Because the expert reports failed to inform Dr. Horndeski of the specific conduct Price called into question and failed to provide a basis from which the trial court could conclude her claims had merit, we conclude the reports do not constitute a good faith effort to comply with the definition of an expert report. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(l); *E.D. by and through B.O.*, 644 S.W.3d at 664; *Palacios*, 46 S.W.3d at 879.

We hold that the trial court erred in denying Dr. Horndeski's motion to dismiss Price's health care liability claim against him. We sustain Dr. Horndeski's first and second issues.

D. Thirty-Day Extension to Cure Deficiencies

Should this Court determine that Dr. Lapuerta's expert reports are deficient, Price requests that we remand the case to the trial court with instructions "to consider allowing 30 days for further supplementation." Texas Civil Practice and Remedies Code Section 74.351(c) affords a trial court the ability to grant a plaintiff one 30-day extension to cure deficiencies in her expert report. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(c). When an appellate court reverses a trial court's denial of a motion to dismiss a health care liability claim due to the omission of any of the statutory expert report requirements, the appellate court may remand the case to the trial court to consider granting a 30-day extension for the plaintiff to cure the deficiencies in the report. *Leland v. Brandal*, 257 S.W.3d 204, 207–08 (Tex.

2008); *see also Lewis v. Funderburk*, 253 S.W.3d 204, 208 (Tex. 2008) (stating deficient report may be cured by amending report or by serving new report from separate expert that cures deficiencies in previously filed report).

The trial court is in the best position to decide whether a cure for an inadequate expert report is feasible. *See Samlowski v. Wooten*, 332 S.W.3d 404, 411–12 (Tex. 2011). The Texas Supreme Court has instructed that "trial courts should be lenient in granting [a] thirty-day extension[ ] and must do so if [the] deficiencies in an expert report can be cured within the thirty-day period." *Scoresby*, 346 S.W.3d at 554; *see also Cook v. Broussard*, No. 01-17-00943-CV, 2018 WL 3384638, at *6–7 (Tex. App.—Houston [1st Dist.] July 12, 2018, no pet.) (mem. op.). Because Price has not been given the opportunity to cure any deficiencies in her expert reports—and she requested an extension of time to cure any deficiency in her responsive brief—it is appropriate to remand this case to the trial court to consider whether the deficiencies identified by this Court in Dr. Lapuerta's expert reports can be cured and, thus, whether to grant an extension of time. *See Scoresby*, 346 S.W.3d at 549 ("An individual's lack of relevant qualifications and an opinion's inadequacies are deficiencies the plaintiff should be given an opportunity to cure if it is possible to do so."); *see also Mangin v. Wendt*, 480 S.W.3d 701, 706 (Tex. App.—Houston [1st Dist.] 2015, no pet.) ("[W]hen the court of appeals finds deficient a report that the trial court considered adequate, the

plaintiff should be afforded one 30-day extension to cure the deficiency, if possible." (internal quotations omitted)).[3]

Conclusion

We reverse the trial court's order denying Dr. Horndeski's motion to dismiss Price's health care liability claim against him. We remand this case to the trial court to determine whether Price should be granted a 30-day extension to file an expert report or reports compliant with the Texas Medical Liability Act and for further proceedings consistent with this opinion.

Veronica Rivas-Molloy
Justice

Panel consists of Justices Landau, Hightower, and Rivas-Molloy.

[3] We express no opinion on the propriety of an extension.