Affirmed and Memorandum Opinion filed January 14, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00797-CV

NICOLE LITTLE, Appellant

V.

RIVERSIDE GENERAL HOSPITAL INC., Appellee

On Appeal from the 61st District Court
Harris County, Texas
Trial Court Cause No. 2013-61281

M E M O R A N D U M O P I N I O N

Nicole Little appeals from the trial court's dismissal of her suit against Riverside General Hospital for injuries sustained from a fall on hospital grounds. The trial court dismissed the suit under section 74.351(b) of the Texas Civil Practice and Remedies Code, finding that Little failed to provide the hospital with an expert report as required. In one issue, Little contends that the trial court erred in dismissing her claim because it is not a "health care liability claim" as defined

by the Civil Practice and Remedies Code. We hold that Little's claim is substantively related to the hospital's provision of health care and, therefore, is a health care liability claim. We affirm.

Factual and Procedural Background

Appellant Nicole Little filed suit against appellee Riverside General Hospital for injuries resulting from a fall into a grease pit on hospital grounds. The facts surrounding the fall are undisputed. Little was an inpatient resident receiving treatment for substance abuse at Riverside's Houston Recovery Campus. At the time of the incident, Little was participating in an informal cookout held outside on the grounds of the hospital. Little noticed a child standing on a wooden pallet covering a grease pit. Little approached the child to remove him from the pallet. Before she could remove him, the child jumped off of the pallet, causing the pallet to flip upwards and causing Little to fall into the pit. Because of the depth of the pit, Little was unable to exit the pit by herself. The fire department responded to the incident and lowered a ladder into the pit to help Little climb out to safety. Little alleges that she suffered an injury to her ankle as well as severe mental anguish.

Little filed suit under a premises liability theory, claiming that Riverside owed a duty of care requiring it to inspect hospital grounds for any latent defects and to make them safe or to give residents an adequate warning of the dangers posed by these defects. In its answer, Riverside characterized Little's claim as a health care liability claim governed by the Texas Medical Liability Act (TMLA). Riverside later filed a motion to dismiss under section 74.351(b) of the TMLA, claiming that Little had failed to present Riverside with the expert report required

by that section of the Act.[1] After a hearing, the trial court granted Riverside's motion to dismiss. Little now appeals the dismissal of her case, arguing that section 74.351 does not apply to this lawsuit because her claim is not a health care liability claim.

Analysis

Little argues that her claim is not a health care liability claim within the meaning of the TMLA because it alleges a breach of duty unrelated to Riverside's provision of health care. Ordinarily, we review a trial court's order granting or denying a section 74.351(b) motion to dismiss for abuse of discretion. *Memorial Hermann Hosp. Sys. v. Galvan*, 434 S.W.3d 176, 179 (Tex. App.—Houston [14th Dist.] 2014, pet. granted), *rev'd on other grounds*, No. 14-0410, 2015 WL 7791565, —S.W.3d— (Tex. 2015) (per curiam). However, because the issue in this case requires us to interpret the statute to determine whether it extends to Little's claim, we review the trial court's judgment *de novo*. *Id.*

The TMLA defines a "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.

Tex. Civ. Prac. & Rem. Code Ann. § 74.001(a)(13) (West 2015). According to this definition, "there are three basic elements of a health care liability claim: (1) a

[1] "In a health care liability claim, a claimant shall, not later than the 120th day after the date each defendant's original answer is filed, serve on that 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." Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a) (West 2015).

physician or health care provider must be a defendant; (2) the claim or claims at issue must concern treatment, lack of treatment, or a departure from the accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care; and (3) the defendant's act or omission of which the claimant complains allegedly must have been the proximate cause of injury to the claimant." *Galvan*, 434 S.W.3d at 179. The parties do not dispute that Riverside is a health care provider under the statute. The only issue before us is whether Riverside's alleged breach of duty is a departure from safety standards related to health care.

In its recent decision in *Ross*, the Texas Supreme Court held that, in a safety standards-based claim against a health care provider, the standards allegedly breached by the provider need not be "directly related to health care," but they must have a "substantive relationship" to the provision of health or medical care.[2] *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 504 (Tex. 2015). Here, Little insists that her claim is strictly one of premises liability, alleging a breach of duty unrelated to the provision of health care. But even though Little has pleaded her claim as one of premises liability, we must "consider the underlying nature of the claim" when determining whether it is directly or substantively related to health care. *Omaha Healthcare Ctr., LLC v. Johnson*, 344 S.W.3d 392, 394 (Tex. 2011).

Little's premises liability claim assumes that the duty to inspect, make safe, or warn arises only from Riverside's status as the operator of the property and her

[2] In *Tex. West Oaks Hospital, LP v. Williams*, the Texas Supreme Court held that, in the definition of "health care liability claim" provided in section 74.001(a)(13), the phrase "directly related to health care" modifies only the terms immediately before it—"professional or administrative services"—but does not modify "safety." 371 S.W.3d 171, 185–86 (Tex. 2012). In *Ross*, the Court clarified its holding and ruled that, while "directly related to health care" did not modify "safety," there nonetheless must be some substantive relationship between the safety standards that are alleged to have been breached and the provision of health care. 462 S.W.3d at 502–04.

own status as an invitee on that property. We note that Riverside's status as Little's health care provider also imposes on it a duty to maintain her safety, the breach of which can be the crux of a health care liability claim under the TMLA. *See Ross*, 462 S.W.3d at 505; *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 850–51 (Tex. 2005) (healthcare facilities have a different obligation to their residents than non-treating premises owners do). "The pivotal issue in a safety standards-based claim is whether the standards on which the claim is based implicate the defendant's duties as a health-care provider, including its duties to provide for patient safety." *Ross*, 462 S.W.3d at 505.

Relying on the Supreme Court's decision in *Loaisiga v. Cerda*, Little argues that the maintenance of the grease pit on hospital grounds is "wholly and conclusively inconsistent with, and thus separable from" the rendition of health care. 379 S.W.3d 248, 257 (Tex. 2012). However, *Loaisiga* is distinguishable from the case at hand. *Loaisiga* involved actions by a health care provider that were outside the scope of and not incident to the care that the provider's patients were seeking.[3] *Id.* Here, the residential care that Little sought necessarily required that the hospital take action to ensure her safety at all times in which she was a

[3] In *Loaisiga*, the patients were seeking treatment for sinus and flu-like symptoms. 379 S.W.3d at 253. During the course of the exams, the doctor groped the patients' breasts. *Id.* The Supreme Court concluded that this touching was inappropriate and not within the scope of the treatment sought, meaning that the plaintiffs' claims were not within the scope of the TMLA. *Id.* at 257. The Court distinguished *Loaisiga* from a similar case, *Vanderwerff*, in which the plaintiff filed suit after a chiropractic exam in which she alleged that the chiropractor inappropriately touched her genitals. *Id.* at 256–57; *Vanderwerff v. Beathard*, 239 S.W.3d 406, 409 (Tex. App.—Dallas 2007, no pet.). The *Vanderwerff* court held that the touching of the plaintiff's genitals could have been within the scope of the exam because the plaintiff was seeking care for pain running from her knee to her upper thigh. 239 S.W.3d at 409. Because the touching ostensibly could have been within the scope of the care requested, the court of appeals held that the plaintiff's claim was a health care liability claim. We conclude that Little's case is more like *Vanderwerff* than *Loaisiga* because the maintenance of safety on hospital grounds is certainly within the scope of Little's residential treatment program and thus is not separable from the provision of her health care.

patient at the facility. Protection of patient safety—including maintenance of hospital grounds to prevent injury—is part and parcel of the provision of health care, especially in the context of residential treatment. We find case law regarding a health care liability claim in the residential nursing home context to be illustrative. Little's case is similar to *Johnson*, where the claim involved a resident of a nursing home who was fatally injured when she was bitten by a brown recluse spider. 344 S.W.3d at 393. Like Little, the deceased's representative pleaded the claim under a premises liability theory, alleging that the nursing home failed to inspect the premises for pests. *Id.* at 393. The Texas Supreme Court held in *Johnson*—and reiterated in *Ross*—that the claim was ultimately a health care liability claim because it alleged a departure from the "fundamental patient care required of a nursing home . . . to protect the health and safety of its residents." *Id.* at 394 (citing 40 Tex. Admin. Code §§ 19.1701, 19.401(b) (2015)); *Ross*, 462 S.W.3d at 502 (discussing *Johnson* as a case in which the patient's negligence claim was directly related to the provision of health care).[4]

Substance abuse treatment centers like Riverside are required to adhere to the same standard of care for their patients—a standard that includes the maintenance of a safe environment. 25 Tex. Admin. Code § 448.211 (2015) (Department of State Health Servs. Substance Abuse Treatment Standard of Care) (requiring substance abuse treatment centers to provide an "appropriate, safe, clean, and well-maintained environment"). Little's allegation that Riverside failed to make its grounds safe for its residents is an allegation that it did not comport

[4] The Texas Administrative Code provides that a nursing home must provide "a safe, functional, sanitary, and comfortable environment" for residents. 40 Tex. Admin. Code § 19.1701 (2015) (Tex. Dep't of Aging and Disability Servs. Nursing Facility Quality of Life Requirements). The Code also contains a "Statement of Resident Rights" that provides a right to "safe, decent, and clean conditions" for nursing home residents. *Id.* § 19.401(b) (2015) (Tex. Dep't of Aging and Disability Servs. Nursing Facility Statement of Resident Rights).

with the required standard of patient care. We conclude that the Little's claim, despite being pleaded in the language of premises liability, alleges a "violation[] of safety standards directly related to the provision of health care," which includes protecting patients from injury on hospital premises. *Ross*, 462 S.W.3d at 502 (citing *Johnson*, 344 S.W.3d at 394–95).

Conclusion

Under *Ross*, Little's claim is a health care liability claim and, as such, is subject to the requirements set forth in section 74.351. We affirm the judgment of the trial court dismissing Little's claim for noncompliance with the TMLA.

/s/ Marc W. Brown
Justice

Panel consists of Justices Boyce, Busby, and Brown.