



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00288-CV

CHRISTUS SPOHN HEALTH SYSTEM CORPORATION
d/b/a Christus Spohn Hospital Alice,
Appellant

v.

Aundria **HINOJOSA** and Florencio Hinojosa V, Individually and as Wrongful Death
Beneficiaries of Florencio Hinojosa VI, Deceased,
and on Behalf of the Estate of Florencio Hinojosa VI, Deceased,
Appellees

From the 79th Judicial District Court, Jim Wells County, Texas
Trial Court No. 15-07-54935-CV
Honorable Richard C. Terrell, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: December 21, 2016

AFFIRMED

This is an accelerated appeal from the trial court's interlocutory order denying a motion to dismiss a health care liability claim filed by appellant Christus Spohn Health System Corp. d/b/a Christus Spohn Hospital Alice ("the Hospital"). On appeal, the Hospital contends the trial court abused its discretion in denying the motion, asserting the expert report was deficient because: (1) the expert was not qualified to render an opinion on the appropriate standard of care and; (2) the

report provided only conclusory opinions as to the standard of care, breach, and causation. We affirm the trial court's order denying the Hospital's motion to dismiss.

BACKGROUND

Appellees Aundria Hinojosa and Florencio Hinojosa V, Individually and as Wrongful Death Beneficiaries of Florencio Hinojosa VI, Deceased, and on Behalf of the Estate of Florencio Hinojosa VI, Deceased ("collectively the Hinojosas"), filed suit against the Hospital and an emergency room physician, Sophia Koen, M.D., after their six-year-old son died a day after he was discharged from the Hospital. In May of 2013, Aundria took her son to the Hospital's emergency room after he developed a high fever and experienced vomiting, diarrhea, congestion, cough, and a sore throat. While at the emergency room, the child was seen by various nurses and Dr. Koen. The child's initial vital signs showed he had an elevated temperature of 99.1 as well as an abnormally fast resting heart rate and rapid breathing. He was also vomiting in the emergency room and exhibited a red throat. Dr. Koen gave the child Zofran for nausea and ordered a chest x-ray and blood test.

According to the blood test results, the child had an elevated white blood cell count, and his chest x-ray results revealed opacification in both lungs. After reviewing these test results, Dr. Koen diagnosed the child with bacterial pneumonia and prescribed an antibiotic as well as Motrin to help lower his temperature. According to Aundria, her son also expressed he had a headache while at the emergency room, but no additional tests were ordered. After receiving the prescription, the child was discharged.

Later that day, the child became unresponsive, and his parents took him to Driscoll Children's Hospital. At that hospital, the child began seizing and was given Ativan. A CT scan indicated the child had increased intracranial pressure. Eventually, the child was intubated and

given intravenous fluids to help stabilize him; however, the child died the next day. An autopsy report shows the cause of death as “cerebellar tonsillar herniation,” due to brain swelling.

The Hinojosas filed a health care liability claim against the Hospital and Dr. Koen, alleging their son was negligently treated and prematurely discharged. As required by statute, the Hinojosas timely served the Hospital with an expert report by Terrence Baker, M.D. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a) (West Supp. 2016). The Hospital moved to dismiss the Hinojosas’ suit, objecting to the report on the basis that Dr. Baker was not qualified to opine on the standard of care applicable to emergency room nurses and the report contained conclusory assertions with regard to the standard of care, breach, and causation. The trial court denied the motion to dismiss, and the Hospital perfected this interlocutory appeal.

ANALYSIS

On appeal, the Hospital argues the trial court erred in denying its motion to dismiss because the expert report is deficient. Specifically, the Hospital contends the expert report is deficient because Dr. Baker failed to establish he was qualified to render an opinion on the appropriate standard of care for emergency room nurses and Dr. Baker provided only conclusory opinions as to the standard of care, breach, and causation.

Standard of Review

We review a trial court’s ruling on a motion to dismiss a health care liability lawsuit brought under Chapter 74 of the Texas Civil Practice and Remedies Code (“the Code”) for an abuse of discretion. *Hill Country San Antonio Mgmt. Servs., Inc. v. Trejo*, 424 S.W.3d 203, 208 (Tex. App.—San Antonio 2014, pet. dism’d) (citing *Bowie Mem’l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002); *Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 875 (Tex. 2001)); *Peterson Regional Med. Ctr. v. O’Connell*, 387 S.W.3d 889, 892 (Tex. App.—San Antonio 2012, pet. denied). In reviewing the trial court’s decision, we may not substitute our judgment for

that of the trial court with regard to factual matters. *See Bowie*, 79 S.W.3d at 52. “A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles.” *Id.*; *Peterson*, 387 S.W.3d at 892. A trial court also abuses its discretion if it fails to analyze or apply the law correctly. *Peterson*, 387 S.W.3d at 892.

Applicable Law – Expert Report Requirements

Section 74.351(a) of the Code requires a plaintiff to serve each physician or health care provider against whom a health care liability claim is asserted an expert report and curriculum vitae of each expert within a specified time. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a). The report serves two purposes: (1) to inform the defendant of the specific conduct the plaintiff has called into question; and (2) to provide a basis for the trial court to conclude the plaintiff’s claims have merit. *Bowie*, 79 S.W.3d at 52; *Palacios*, 46 S.W.3d at 879. The statute defines a valid 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 the applicable standards of care, the manner in which the care rendered by the physician ... failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.” TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(6); *see Bowie*, 79 S.W.3d at 52; *Palacios*, 46 S.W.3d at 879. A trial court must sustain a challenge to the sufficiency of the report if the report does not constitute an objective good faith effort to comply with the statutory requirements. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(1); *see Bowie*, 79 S.W.3d at 52; *Palacios*, 46 S.W.3d at 879.

When determining whether a report represents a good faith effort to comply with the statute, the trial court looks only to the information within the four corners of the report and is prohibited from making any inferences therefrom. *Bowie*, 79 S.W.3d at 52–53; *Palacios*, 46 S.W.3d at 878. Although the report need not marshal all the plaintiff’s proof, the report must include an opinion as to the applicable standard of care, breach, and causal relationship. *Bowie*,

79 S.W.3d at 52; *Palacios*, 46 S.W.3d at 878. To constitute a good faith effort, the report cannot merely state the expert's conclusions about the elements identified above; rather, the report must contain explanations of the basis of the expert's statements and link the expert's conclusions to the facts. *Jelinek v. Casas*, 328 S.W.3d 526, 539–40 (Tex. 2010); *Bowie*, 79 S.W.3d at 52; *Palacios*, 46 S.W.3d at 878.

Expert Qualifications

As mentioned above, the Hospital contends the expert report failed to establish Dr. Baker was qualified to offer an opinion on the standard of care for emergency room nurses. Specifically, the Hospital argues Dr. Baker failed to meet two of the three statutory requirements a person must meet to be considered qualified to opine on the standard of care. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(b) (outlining three requirements person must meet to qualify as expert). First, Dr. Baker did not establish he possessed knowledge of the applicable standard of care because nowhere in his report did he state he was familiar with the standard of care for emergency room nurses. *See id.* Next, Dr. Baker did not establish he was qualified on the basis of training or experience because he did not establish he was actively practicing health care by rendering health care services relevant to the claim. *See id.*

An expert who gives opinion testimony regarding whether a health care provider departed from the acceptable standards of health care must be qualified to testify under section 74.402 of the Code. TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(r)(5)(B). Section 74.402 authorizes a person to give such an opinion so long as they meet the following three requirements: (1) practice in a field of practice that involves the same type of care or treatment as that delivered by the defendant health care provider; (2) possess knowledge of accepted standards of care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and (3) qualify on the basis of training or experience to offer an expert opinion regarding those accepted

standards of health care. *Id.* § 74.402(b); *Benish v. Grottie*, 281 S.W.3d 184, 206 (Tex. App.—Fort Worth 2009, pet. denied). In determining whether a person is qualified on the basis of training or experience, section 74.402(c) further provides that the court shall consider whether the witness is “certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim [and] is actively practicing health care in rendering health care services relevant to the claim.” TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(c).

In his expert report, Dr. Baker stated he is board certified in emergency medicine and currently serves as the Director of Education of the Emergency Department at Good Samaritan Hospital in Baltimore, Maryland. He stated he began practicing medicine in 1977, and after receiving his board certification, he served as both an oral and written examiner for the board of certification in emergency medicine. In addition to serving as an examiner, Dr. Baker stated he served on the peer review board for standards of care and emergency medicine at Good Samaritan Hospital. Dr. Baker also indicated he was currently practicing medicine at the time the claim arose, and as part of his practice, he treated patients with the same conditions as the Hinojosas’ son. He further added that as a result of his practice, he was familiar with the accepted standards of care for the assessment, diagnosis, care, and treatment of medical conditions similar to the Hinojosas’ son as they apply to physicians, and that he acquired such knowledge through his regular contact with hospital nurses, who also cared for patients with conditions similar as the Hinojosas’ son.

Based on Dr. Baker’s statements regarding his qualifications, we disagree with the Hospital’s contention that Dr. Baker did not establish he was qualified because he did not specifically state he was familiar with the standard of care concerning emergency room nurses. To determine if Dr. Baker was qualified on the applicable standard of care, we must look to the condition involved in the claim and the expert’s familiarity with it. *Tawa v. Gentry*, No. 01-12-

00407-CV, 2015 WL 1694869, at *6 (Tex. App.—Houston [1st Dist.] April 18, 2013, no pet.) (mem. op.). A review of Dr. Baker’s report reveals he has experience in treating patients in an emergency room setting and with conditions similar to the condition experienced by the Hinojosas’ son. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.402 (requiring expert to possess knowledge of acceptable standard of care for condition involved in claim); *see also Owens v. Handyside*, 478 S.W.3d 172, 186 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (holding neurologist expert qualified to opine on standard of care for emergency room doctor because report showed experience with condition involved in claim); *see also Tawa*, 2015 WL 1694869, at *7 (holding expert qualified to opine on standard of care because expert demonstrated experience with condition involved in claim).

Moreover “[a] physician can be qualified to offer an opinion on the nursing standard of care if he is familiar with the nursing standard of care because he has taught courses to nurses and he has worked with and interacted with nurses.” *Tenet Hosp. Ltd v. De La Rosa*, 496 S.W.3d 165, 171 (Tex. App.—El Paso 2016, no pet.); *Marente v. Asah*, 486 S.W.3d 680, 688 (Tex. App.—Texarkana 2016, no pet.); *Methodist Health Ctrs. v. Crawford*, No. 01-14-00291-CV, 2014 WL 5500492, at *2 (Tex. App.—Houston [1st Dist.] Oct. 30, 2014, no pet.) (mem. op.). Here, after describing his credentials and experience with patients with conditions similar to the Hinojosas’ son, Dr. Baker stated he acquired his knowledge based on his interaction with and supervision of hospital nurses, including nurses in an emergency room setting.

The Hospital relies on *Simonson v. Keppard* to support its position that Dr. Baker was not qualified because he did not specifically state he was familiar with the standard of care applicable to emergency room nurses. 225 S.W.3d 868, 872 (Tex. App.—Dallas 2007, no pet.). In *Simonson*, the Fifth Court of Appeals held a physician was not qualified to render an opinion on the issue of whether a nurse departed from the applicable standard of care because “[n]owhere in his affidavit

does [the expert physician] state that he either has knowledge of the standard of care applicable to nurse practitioners or that he has ever worked with or supervised nurse practitioners.” *Id.* However, unlike the expert in *Simonson*, Dr. Baker includes specific statements in his report, explaining he routinely worked with and supervised nurses, including nurses in the emergency department, who cared for patients with conditions like the condition involved in this claim. Moreover, when describing the applicable standards of care involved in the claim, Dr. Baker identified the standard of care applicable to physicians and nurses in an emergency room setting. *See Crawford*, 2014 WL 550492, at *2 (holding expert physician qualified because professed knowledge on the standard of care for nurses, providing basis for trial court to conclude physician familiar with standard). Accordingly, we disagree with the Hospital and conclude Dr. Baker established that he possessed knowledge of the applicable standard of care for the condition involved in the claim.

The Hospital next contends Dr. Baker was not qualified on the basis of training or experience because he did not establish he was actively “practicing health care” by rendering health care services relevant to the claim. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.402(b), (c). To support its contention, the Hospital points out that the statute defines “practicing health care” as “training health care providers in the same field as the defendant health care provider at an accredited educational institution” and nowhere in his report does Dr. Baker state he taught nurses in an emergency room setting at an accredited institution. *See id.* at § 74.402(a).

We reject the Hospital’s contention that Dr. Baker is unqualified on such a basis. We have found no authority, nor does the Hospital cite any, for the proposition that an expert must have trained nurses in an emergency room setting at an accredited institution to be considered actively practicing. “Expert qualifications should not be too narrowly drawn.” *Larson v. Downey*, 192 S.W.3d 303, 305 (Tex. 2006) (per curiam); *see Baylor College of Med. v. Pokluda*, 283 S.W.3d

110, 120 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Rather, the broader question is whether the expert has knowledge, skill, experience, training or education regarding the condition involved in the claim. *Larson*, 192 S.W.3d at 305. Here, Dr. Baker states he has direct experience with treating patients with conditions like the condition involved in this claim, he routinely interacts with nurses who treat patients with such conditions, and he has supervised nurses in an emergency room setting who care for patients with such conditions. Based on the foregoing, we conclude Dr. Baker’s qualifications, as set forth in his report, sufficiently qualify him to opine on the proper standard of care to emergency room nurses. Accordingly, we hold the trial court did not abuse its discretion in determining Dr. Baker was qualified to provide an expert opinion.

Conclusory Nature of Report

As an alternative argument, the Hospital contends the trial court abused its discretion by failing to grant its motion to dismiss because Dr. Baker’s report was conclusory as to the applicable standard of care, breach, and causation elements of the Hinojosas’ claim. With respect to the applicable standards of care and alleged breach, the Hospital contends Dr. Baker merely identified the applicable standard of care and concluded the nurses breached it without explaining what the emergency room nurses “should have done differently.”

“Identifying the standard of care in a health care liability claim 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. As stated above, an expert must provide a “fair summary” of his opinions, and although “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.” *Id.*; see TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(a).

Looking at the four corners of the report, we conclude that Dr. Baker's report adequately states the standard of care applicable to the emergency room nurses and how the emergency room nurses breached that standard. Under the "Standards of Care" section, Dr. Baker identifies the standard of care applicable to emergency room nurses. He states it required emergency room nurses to recognize the child's condition had worsened, and in the event a physician refused to admit the child, it required the nurses to invoke a chain of command to prevent the child from being discharged. Dr. Baker continues by stating the standard of care was breached because the emergency room nurses did not recognize the child's worsening symptoms — specifically, the fact that his vital signs had not improved, his respiratory rate had increased, and he complained of a headache — and the emergency room nurses did not invoke the chain of command and obtain an order to prevent the child from being discharged. Contrary to the Hospital's assertion, Dr. Baker fully explains what the emergency room nurses should have done differently — recognized the symptoms specified above and obtained an order to admit the child. According to Dr. Baker, if the child had been admitted, he would have received supportive therapies and treatment, more particularly described in the later sections of his report. Accordingly, after reviewing the report, we hold Dr. Baker's report sufficiently sets out what care was expected but was not given, placing the Hospital on notice of complained of conduct and providing a basis for the trial court to conclude the Hinojosas' claims have merit. *See Palacios*, 46 S.W.3d at 879-80.

The Hospital also argues Dr. Baker's opinion on causation was inadequate because it was conclusory as it failed to set out a causal connection between the Hospital's alleged breach and the death of the Hinojosas' son. According to the Hospital, Dr. Baker's report focuses on the physician's conduct as opposed to the emergency room nurses' conduct and how such conduct caused the child's death.

To establish causation, the expert report must include information linking the defendant's purported breach of the standard of care to the patient's injury. *Tenet Hosps., Ltd. v. Garcia*, 462 S.W.3d 299, 302–03 (Tex. App.—El Paso 2015, no pet.) (citing *Bowie*, 79 S.W.3d at 53). The report may not have an “analytical gap” or a “missing link” between the expert's allegation that the defendant breached the standard of care and the plaintiff's injuries. *See Clark v. HCA, Inc.*, 210 S.W.3d 1, 11 (Tex. App.—El Paso 2005, no pet.). Although there are no “magical words” required to establish causation, a causal relationship is established by proof that the negligent act or omission was a substantial factor in bringing about the harm, and that absent this act or omission, the harm would not have occurred. *Costello v. Christus Santa Rosa Health Care Corp.*, 141 S.W.3d 245, 249 (Tex. App.—San Antonio 2004, no pet.).

An expert may also establish causation by explaining a chain of events that begins with a defendant health care provider's negligence and ends in injury to the plaintiff. *See McKellar v. Cervantes*, 367 S.W.3d 478, 485 (Tex. App.—Texarkana 2012, no pet.). A bare assertion that the breach caused the injury is insufficient. *Jelinek*, 328 S.W.3d 539–40. When assessing the sufficiency of an expert's opinion on causation, we view the opinion in the context of the entire report. *Ortiz v. Peterson*, 378 S.W.3d 667, 671 (Tex. App.—Dallas 2012, no pet.).

In his report, Dr. Baker first sets forth how Dr. Koen's conduct proximately caused the child's death. After specifying the signs and symptoms that should have prompted Dr. Koen to admit the child to the hospital for treatment, Dr. Baker opines that if the child had been admitted at least two things would have occurred. The child would have more than likely been seen by the infectious disease unit so that appropriate antibiotics and supportive therapies could be given and the child would have been placed on a monitored bed or in the ICU department so that he could have been closely monitored. He further explains that if the child had been admitted, he would have been closely monitored by skilled nurses, and any changes would have been aggressively

treated. Instead, the child's condition progressed to multi-organ failure and cerebrovascular collapse, which ultimately lead to his death. Dr. Baker continues that the emergency room nurses also failed to recognize specific symptoms and to invoke the chain of command to prevent the child from being discharged from the Hospital, and this breach "lead to the child's continued deterioration and eventual death." Dr. Baker goes on to reiterate that had the child been admitted "as described above," the child would have received the care he needed to prevent his death.

When assessing the sufficiency of Dr. Baker's opinion on causation, we must view his opinion in context of the entire report. *See Ortiz*, 378 S.W.3d at 671. Here, the report sufficiently sets out how the emergency room nurses' failure to recognize symptoms and prevent the child's discharge ultimately lead to the child's death. *See id.* From the four corners of the report, we can gather it is Dr. Baker's opinion that the child's premature discharge was a substantial factor in bringing about his death, and if the child had been admitted to the hospital — whether by Dr. Koen's orders or the emergency room nurses' invocation of the chain of command — the child would have received specific care, which would have prevented his death. *See Costello*, 141 S.W.3d at 249. Dr. Baker's failure to reiterate in detail the type of care the child would have received had he been admitted and how such care would have prevented the child's death in the context of emergency room nurses does not render the report is inadequate; the report, when considered as a whole, provides sufficient information linking the emergency room nurses' breach to the child's death. *See Garcia*, 462 S.W.3d 299, 302–03. Accordingly, we hold the trial court did not abuse its discretion in deeming Dr. Baker's report as adequate with regard to breach and causation and ultimately denying the Hospital's motion to dismiss.

CONCLUSION

Based on the foregoing, the trial court did not abuse its discretion in denying the Hospital's motion to dismiss. We hold the trial court was within its discretion in concluding the expert was

qualified to opine on the standard of care applicable to emergency room nurses and the expert's opinion was not conclusory as to standard of care, breach, or causation. Accordingly, we affirm the trial court's order.

Marialyn Barnard, Justice