

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00025-CV

PINNACLE HEALTH FACILITIES OF TEXAS, XI, LP
d/b/a THE OAKS AT BEAUMONT, Appellant

V.

DELORES CALVIN AND HERMAN JOHNSON,
INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
JESSIE L. JOHNSON, Appellees

On Appeal from the 58th District Court
Jefferson County, Texas
Trial Cause No. A-184,366

MEMORANDUM OPINION

This interlocutory appeal concerns the adequacy of expert reports under standards that apply to health care liability claims. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(10) (West 2008), § 74.351 (West 2011). The appellees, Delores Calvin and Herman Johnson, individually and on behalf of the estate of Jessie L. Johnson, Deceased, filed a health care liability claim against the nursing home where Jessie had been a patient, Pinnacle Health Facilities of Texas, XI, LP d/b/a The Oaks at Beaumont

(Pinnacle), and Jessie's treating physician. On appeal, Pinnacle contends the appellees' expert reports are deficient, and the trial court abused its discretion by failing to dismiss the appellees' claims. *See id.* § 74.351(l). Because we conclude the trial court did not abuse its discretion, we affirm the trial court's order.

Background

Pinnacle admitted Jessie as a patient in May 2007. Jessie's care included anticoagulant therapy. When Jessie was admitted, her anticoagulant levels (PT/INR)¹ were sub-therapeutic and her Coumadin dose was increased. In mid-June 2007, when tests showed that Jessie's PT/INR levels remained below the desired treatment range, Jessie's treating physician ordered that Jessie be given a second anticoagulant, Lovenox. When Jessie's levels remained sub-therapeutic, in late June 2007, Jessie's treating physician again adjusted her Coumadin dose and ordered a PT/INR test for July 10, 2007. On July 9, 2007, Jessie began vomiting blood and was transferred to a hospital. Upon admission to the hospital, Jessie's PT/INR level was checked and found to be above the therapeutic range. Jessie was diagnosed with a gastrointestinal hemorrhage, which the appellees' medical expert attributes to a lack of proper monitoring of Jessie's anticoagulant level. Jessie died on July 10, 2007.

The appellees allege that Pinnacle's negligence, together with that of her treating physician, caused Jessie's death. The appellees contend that patients receiving double

¹PT/INR refers to prothrombin time and international normalized ratio, respectively, and are used to measure coagulation time. *See* <http://www.webmd.com/a-to-z-guides/prothrombin-time> (last visited May 16, 2011).

anticoagulant therapy should have their PT/INR levels monitored by testing every one to three days. The appellees contend that Pinnacle negligently provided nursing home care to Jessie, and that its negligent nursing care proximately caused Jessie's death.

In denying Pinnacle's motion to dismiss, the trial court considered four reports authored by the appellees' two experts. The record includes the original and supplemental reports of Dr. David Mansfield, who holds board certifications in the fields of family practice and wound care. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(a). The record also includes the original and supplemental reports of Melody Antoon, a registered nurse. *See id.*

The trial court conducted a hearing, overruled Pinnacle's objections to Dr. Mansfield's and Nurse Antoon's reports, and denied Pinnacle's motion to dismiss. In a single issue, Pinnacle argues that the trial court erred in overruling its objections to the reports and abused its discretion by denying its motion to dismiss.

Applicable Law

We review a trial court's ruling on a motion to dismiss a health care liability claim for abuse of discretion. *See Am. Transitional Care Ctrs. of Tex., Inc. v. Palacios*, 46 S.W.3d 873, 877 (Tex. 2001). "A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner without reference to any guiding rules or principles." *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002). A trial court also abuses its

discretion if it fails to analyze or apply the law correctly. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992).

In cases involving health care liability claims, the claimant must file an expert report that provides a “fair summary” of the expert’s opinion as of the date of the report. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6). To constitute a good-faith effort, a report “must discuss the standard of care, breach, and causation with sufficient specificity to inform the defendant of the conduct the plaintiff has called into question and to provide a basis for the trial court to conclude that the claims have merit.” *Palacios*, 46 S.W.3d at 875. A report that merely states the expert’s conclusions on the applicable standard of care, breach, and causation “does not fulfill these two purposes.” *Id.* at 879. “Rather, the expert must explain the basis of his statements to link his conclusions to the facts.” *Wright*, 79 S.W.3d at 52 (quoting *Earle v. Ratliff*, 998 S.W.2d 882, 890 (Tex. 1999)). A reviewing court cannot fill gaps in a report by drawing inferences. *Collini v. Pustejovsky*, 280 S.W.3d 456, 462 (Tex. App.—Fort Worth 2009, no pet.).

Here, to determine whether the appellees’ expert reports represent a good-faith effort to explain how the alleged negligence of Pinnacle caused Jessie’s death, we look to the four corners of the reports. *Palacios*, 46 S.W.3d at 878. With respect to causation, we evaluate whether the reports demonstrate causation beyond mere conjecture. *See Wright*, 79 S.W.3d at 53.

Expert Qualifications

To be qualified to express an opinion against a health care provider,² an expert's qualifications must satisfy the requirements of section 74.402 of the Civil Practice and Remedies Code. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(5)(B). Section 74.402(b) requires an expert to have “knowledge of accepted standards of care for health care providers for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim[,]” and to be “qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of health care.” Tex. Civ. Prac. & Rem. Code Ann. § 74.402(b)(2),(3) (West 2011). Section 74.402(c) provides that the court determines whether a witness is qualified on the basis of training and experience by considering whether, when the claim arose or when the testimony was given, the witness: “(1) is certified by a licensing agency . . . or has other substantial training or experience, in the area of health care relevant to the claim; and (2) is actively practicing health care in rendering health care services relevant to the claim.” *Id.* § 74.402(c) (West 2011). The expert's qualifications “must be evident from the four corners of his report and curriculum vitae.” *Christus Health Se. Tex. v. Broussard*, 267 S.W.3d 531, 536 (Tex. App.—Beaumont 2008, no pet.).

Pinnacle challenges Dr. Mansfield's qualifications to address what was required of Pinnacle's nursing home staff when the patient's treating physician failed to order more

²Pinnacle, a nursing home, is a “[h]ealth care provider” as defined by the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code Ann. § 74.001(a)(11)(j), (a)(12)(A)(vii) (West 2011).

frequent monitoring of Jessie's anticoagulant levels. Pinnacle also challenges Dr. Mansfield's qualifications to express opinions on whether its alleged omissions caused Jessie's death.

Dr. Mansfield is licensed to practice medicine in Texas and New Mexico, and he is board certified in family practice and wound care. Dr. Mansfield was engaged in the active practice of family medicine at the time he authored the reports. Dr. Mansfield's reports reflect that he has treated patients like Jessie, and his reports state that he is familiar with the standards of care applicable to nursing homes. Dr. Mansfield's reports indicate that he has supervised nurses in nursing homes providing care to patients suffering from conditions like Jessie's, and his initial report states that he is "familiar with the standard[s] of care applicable to [the nursing home staff's] conduct in the care of patients like Jessie Johnson" where the patient is "on two medications for anti-coagulation."

We conclude the trial court did not abuse its discretion in determining that Dr. Mansfield is qualified to address the nursing standards as they relate to monitoring a patient's anticoagulant levels in a nursing home facility. *See IHS Acquisition No. 140, Inc. v. Travis*, No. 13-07-481-CV, 2008 Tex. App. LEXIS 2950, at **10-15 (Tex. App.—Corpus Christi Apr. 24, 2008, pet. denied) (mem. op.) (holding that in a case concerning nursing home care—particularly the nursing home's failure to properly monitor a patient—a doctor knowledgeable about the types of people who reside in nursing homes was

qualified to opine about the standard of care applicable to nursing home care). We further conclude that the trial court did not abuse its discretion in determining that Dr. Mansfield had sufficient qualifications to address whether the failure to more closely monitor Jessie's anticoagulant levels caused the complications that led to Jessie's hospitalization and then her death.

Pinnacle also contends that Nurse Antoon is not qualified to give an opinion on causation. However, the appellees do not rely on Nurse Antoon's opinions to establish the cause of Jessie's death or her injuries. Because the appellees rely solely on Dr. Mansfield's opinion with respect to causation, we need not further address Pinnacle's criticism of Nurse Antoon's opinions on causation.

Standard of Care and Breach

Pinnacle, in addressing whether the expert reports adequately state the standard of care applicable to Pinnacle and its nursing staff, argues that the expert reports are not sufficiently specific, fail to provide any factual basis, and erroneously conclude that negligence occurred because Jessie died. After explaining Jessie's medical condition and that she needed anticoagulant therapy, Dr. Mansfield's initial report states:

The standard of care applicable to [Pinnacle] . . . generally required that Jessie Johnson be provided with anticoagulant therapy to prevent the development of blood clots and subsequent embolization and infarction. However[,] it is especially important to monitor the PT/INR when using 2 anticoagulants so that the clotting mechanism is not over inhibited and bleeding or hemorrhage result. Any . . . nurse, working in a . . . nursing home, who cares for patients who need anticoagulants, should know these very basic facts and very basic medical principles that when using

combination anticoagulant therapy the blood test, PT/INR needs to be monitored frequently, every 1-3 days so that the clotting mechanism will not become over inhibited and bleeding and hemorrhage result.

.....

The standard of care applicable to [Pinnacle] staff with regards to Jessie Johnson required that:

- a. A PT/INR lab test be obtained every 1-3 days to monitor Jessie Johnson's anticoagulation while she was on double anticoagulant therapy.
- b. If an order for a frequent PT/INR lab test could not be obtained from Jessie Johnson's physician the medical director be consulted.

Dr. Mansfield's opined that Pinnacle's nurses should have requested that Jessie's treating physician order Jessie's PT/INR levels to be monitored every one to three days, and if the physician failed to issue such an order, Pinnacle's nurses should have requested orders from Pinnacle's medical director. Nurse Antoon's initial report also reflects that the standard of care for patients on combination anticoagulant therapy requires the patient's PT/INR levels to be monitored "at least every 1-3 days." Nurse Antoon's initial report states that "[i]f the order for frequent monitoring of the PT/INR could not be obtained from the primary physician, the medical director of the facility (The Oaks at Beaumont) should have been contacted."

Both Dr. Mansfield's and Nurse Antoon's expert reports explain the standard of care required of nurses caring for a patient undergoing double anticoagulant therapy. The reports identify Pinnacle's alleged breach of that standard, which they identified as being the failure to insure that Jessie's anticoagulant levels were monitored every one to three days.

While Pinnacle complains that the expert reports are conclusory and not sufficiently specific, we hold otherwise, and conclude that the appellees' expert reports are sufficient to provide a fair summary of the applicable standard of care, to explain how Pinnacle is claimed to have breached that standard, and to inform Pinnacle of the conduct that the appellees are calling into question. *See Palacios*, 46 S.W.3d at 875. We hold the trial court did not abuse its discretion in concluding that the reports adequately explained the applicable standard of care and how it was breached.

Causation

Pinnacle also contends that Dr. Mansfield's reports are inadequate because his explanation regarding how her death was caused by the failure to more closely monitor Jessie's anticoagulant levels is speculative and conclusory. A report that merely states the expert's conclusions as to causation does not satisfy the statutory requirements. Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6). *Palacios*, 46 S.W.3d at 879. The expert must explain how the alleged malpractice caused the injury or death. *See Wright*, 79 S.W.3d at 53. Nonetheless, the appellees are not required to marshal all their proof in the reports or to present evidence in the reports as if actually litigating the merits. *Palacios*, 46 S.W.3d at 878-79. The reports need not meet the same requirements as evidence offered in a summary-judgment proceeding or at trial. *Id.* at 879.

Dr. Mansfield's initial report reflects his opinion that the failure to have more closely monitored Jessie's double anticoagulation therapy led to "the development of

over anticoagulation, gastrointestinal hemorrhage, anemia, shock which caused lactic acidosis, acute renal failure, cardiac arrest[,] and her death.” Dr. Mansfield’s supplemental report further explained that had timely PT/INR tests been obtained, Jessie’s elevated levels could have been detected before she began to vomit blood, thereby, allowing adjustments to her therapy to prevent Jessie’s “clotting mechanism” from becoming “over inhibited.” According to Dr. Mansfield’s supplemental reports, more frequent monitoring would have prevented Jessie’s death, as she would not have “suffered a gastrointestinal bleed and complications, which resulted from such bleed, and she would not have died when she did.” Here, unlike in *Craig v. Dearbonne*, 259 S.W.3d 308 (Tex. App.—Beaumont 2008, no pet.), a case relied upon by Pinnacle, the doctor’s report sufficiently explains how the additional monitoring would have led to the diagnosis and probable successful treatment of the patient’s condition.

We conclude that Dr. Mansfield’s opinion regarding causation is sufficient to explain how the nurse’s failure to follow standards contributed to Jessie’s death. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351(r)(6). We hold the trial court could reasonably reject Pinnacle’s argument that Dr. Mansfield’s report inadequately explained how Pinnacle’s alleged negligence caused Jessie’s death.

Conclusion

We conclude that the trial court did not abuse its discretion in ruling that the reports of Dr. Mansfield and Nurse Antoon meet the requirements of expert reports under

Texas law. *See* Tex. Civ. Prac. & Rem. Code Ann. § 74.351. We hold the trial court did not abuse its discretion in overruling Pinnacle’s objections and denying its motion to dismiss. We overrule Pinnacle’s sole issue on appeal, and we affirm the trial court’s order.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on April 6, 2011
Opinion Delivered June 16, 2011
Before McKeithen, C.J., Kreger and Horton, JJ.