



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00129-CV

ANTONIO SISON, M.D. AND HEIDI
CHRISTINE KNOWLES, M.D.

APPELLANTS

V.

ANDREW M. AND CYNTHIA M.,
BOTH INDIVIDUALLY AND AS
GUARDIANS TO C.M., A MINOR
CHILD

APPELLEES

FROM THE 352ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 352-277588-15

DISSENTING MEMORANDUM OPINION¹

I respectfully dissent to the majority's opinion and judgment affirming the trial court's order that denies appellees' motions to dismiss. Concerning the claims against Dr. Antonio Sison, while Dr. David Smoger's expert report details

¹See Tex. R. App. P. 47.4.

his qualifications as a radiologist and as a diagnostic radiologist, the report fails to establish, as the law requires, his familiarity with the “particular subject” or “very matter” at issue: diagnosing testicular torsion from an ultrasound. See *Ehrlich v. Miles*, 144 S.W.3d 620, 625 (Tex. App.—Fort Worth 2004, pet. denied). Dr. Smoger’s sole sentence concerning his familiarity with diagnosing testicular torsion—“I am familiar with the Radiology standards of care as they apply to the interpretation of testicular ultrasound”—is conclusory and insufficient. See *Mangin v. Wendt*, 480 S.W.3d 701, 709 (Tex. App.—Houston [1st Dist.] 2015, no pet.); *Tenet Hosps. Ltd. v. Love*, 347 S.W.3d 743, 750 (Tex. App.—El Paso 2011, no pet.).

With regard to the claims against Dr. Heidi Christine Knowles, Dr. Jonathan Guenter’s expert report is insufficient because it does not establish beyond mere conjecture a causal link between the alleged breaches of the standard of care by Dr. Knowles and the minor child’s injuries. See *Farishta v. Tenet Healthsystem Hosps. Dallas, Inc.*, 224 S.W.3d 448, 453 (Tex. App.—Fort Worth 2007, no pet.). The report does not explain what additional procedures or treatment would have been available and effective upon a timely and correct diagnosis that were not available or would have been ineffective days later. Instead, the report makes only conclusory statements that an earlier diagnosis of testicular torsion may have led to a better outcome and that an earlier diagnosis “would have more likely than not . . . saved” the testicle. These statements are insufficient to meet the statute’s requirement to explain causation. See *Ortiz v.*

Patterson, 378 S.W.3d 667, 670, 673–75 (Tex. App.—Dallas 2012, no pet.);
Costello v. Christus Santa Rosa Health Care Corp., 141 S.W.3d 245, 249 (Tex.
App.—San Antonio 2004, no pet.).

For these reasons, I would reverse the trial court’s order denying the dismissal motions and remand the case to the trial court for the rendition of a judgment of dismissal and to allow the trial court to award attorney’s fees to appellants. Because the majority does not, I respectfully dissent.

/s/ Terrie Livingston

TERRIE LIVINGSTON
CHIEF JUSTICE

DELIVERED: September 7, 2017