In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00233-CV

KENMAR RESIDENTIAL HCS SERVICES, INC., APPELLANT

V.

JESSE URIEGAS, AS GUARDIAN OF BRANDON URIEGAS, AN INCAPACITATED PERSON, APPELLEE

On Appeal from the 26th District Court
Williamson County, Texas
Trial Court No. 20-0382-C26, Honorable Donna Gayle King, Presiding

March 11, 2022

CONCURRING AND DISSENTING OPINION

I join the majority's interpretation and disposition of the Nurse Hildebrandt report. I dissent regarding that of the Dr. Cascio report.

Section 74.351(r)(6) of the Texas Civil Practice and Remedies Code imposes a "lenient standard." *Aggarwal v. Trotta*, No. 01-19-00012-CV, 2019 Tex. App. LEXIS 4744, at *7 (Tex. App.—Houston [1st Dist.] June 11, 2019, no pet.) (mem. op.); *see Scoresby v. Santillan*, 346 S.W.3d 546, 549 (Tex. 2011) (describing the law as setting a "lenient standard [that] avoids the expense and delay of multiple interlocutory appeals and

assures a claimant a fair opportunity to demonstrate that his claim is not frivolous"). To withstand attack, the report need only "provide a fair summary of the applicable standard of care, the defendant's breach of that standard, and how that breach caused the patient's harm." *Miller v. JSC Lake Highlands Operations*, 536 S.W.3d 510, 513 (Tex. 2017) (per curiam). It does that when its content "fulfill[s] two purposes: (1) it must inform the defendant of the specific conduct the plaintiff has called into question, and (2) it must provide a basis for the trial court to conclude that the claims have merit." *Id.* Moreover, in assessing whether it does, we read it as a whole or in its entirety, as opposed to focusing simply on specific portions or sections of it. *Baty v. Futrell*, 543 S.W.3d 689, 694 (Tex. 2018). So, that enables us to parse through the document and reorder its content to understand what the expert says. *See id.* (wherein the Supreme Court viewed "three statements in different sections of the report" in rejecting the challenge to the report involved there). And, that it may lack buzzwords or magic verbiage matters not; such are unnecessary if the information otherwise satisfies the aforementioned standard. *Id.* at 693–94.

It may be that Dr. Cascio did not exercise care in expressly tying each of his statements to an element of the cause of action. Nonetheless, he said the following. Because Brandon had trouble walking and suffered from weak bones which were likely to break from a fall, his "care plan should include significant monitoring and assistance when moving to decrease the likelihood of [his] falling and sustaining a serious injury." That assessment followed his statement some paragraphs earlier that "[e]ven though Brandon was a clear fall risk, there was not any staff to assist [him] getting in and out from the bathroom." The latter was in reference to the September 23rd fall. Elsewhere in the

document, the doctor observed that: (1) "Kenmar failed to provide assistive care personnel and equipment to aid in Brandon's mobility despite the clear need for such assistance"; (2) "Kenmar and employees failed to provide the appropriate monitoring and assistance to reach the standard of care for Brandon"; (3) "Kenmar and employees were aware of these diagnoses and should have known and had reason to know that Brandon was a fall risk and would likely be injured by such a fall"; (4) "Kenmar's repeated failure to monitor and assist Brandon led to Brandon falling as he was trying to go to the bathroom on 9/23/2018"; and (5) "[t]he impact from that fall was significant and resulted in Brandon breaking his hip." From the leeway afforded us under the "lenient standard" prescribed in *Scoresby*, I find these statements as sufficiently specifying that: (1) the standard of care consisted of providing Brandon staff to assist and monitor him when going to the bathroom; (2) that standard was breached when no staff was provided him when he attempted to go to the bathroom on September 23rd; (3) the absence of that staff caused him to fall; (4) the cause of the fall was foreseeable; and (5) the fall resulted in his injury, that is, a broken hip. In short, the doctor's words, when read in their entirety, informed "the defendant of the specific conduct the plaintiff has called into question, and (2) . . . provide[d] a basis for the trial court to conclude that the claims have merit." So, Dr. Cascio's report was a good faith effort pretermitting the majority's reversal of the order denying Kenmar's motion to dismiss. Instead, I would permit the suit to continue.

Brian Quinn
Chief Justice