IN THE SUPREME COURT OF TEXAS

No. 16-0986

KAREN MILLER, INDIVIDUALLY & AS REPRESENTATIVE OF THE ESTATE OF BETTY RUTH HATHCOCK, AND BETTY CROCKETT, INDIVIDUALLY, PETITIONERS,

v.

JSC LAKE HIGHLANDS OPERATIONS, LP D/B/A VILLAGES OF LAKE HIGHLANDS & VILLAGES OF LAKE HIGHLANDS ASSISTED LIVING, METROSTAT DIAGNOSTIC SERVICES, INC., RICHARD M. WILLIAMS, M.D., AND RICHARD M. WILLIAMS, M.D., P.L.L.C., RESPONDENTS

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

PER CURIAM

The Texas Medical Liability Act requires plaintiffs asserting a health care liability claim to serve each defendant with an "adequate" expert report or face dismissal of their claim. TEX. CIV. PRAC. & REM. CODE § 74.351(l). The issue in this case is whether the trial court abused its discretion by denying the defendants' motions to dismiss when it read several experts' reports together to satisfy the Act's adequacy requirement. *See id*. We hold the trial court did not abuse its discretion and therefore reverse the judgment of the court of appeals and remand for further proceedings.

Betty Ruth Hathcock was a resident at Village of Lake Highlands, an assisted-living facility. On March 22, 2013, Hathcock reported to the Village's staff that she had lost her dental bridge. The staff looked for the bridge but did not find it. That evening, Hathcock began coughing

and showing signs of chest congestion. Dr. Derek LeJeune, the Village's on-call physician, ordered a "stat" chest x-ray.[1] Metrostat, a mobile-imaging facility, conducted the x-ray and forwarded the images to Dr. Richard M. Williams for review. Although the images revealed the presence of the missing dental bridge in Hathcock's trachea, neither Metrostat's technician nor Dr. Williams noticed or identified the problem or noted it in a report.

Hathcock's condition worsened over the course of the evening. Early the next morning, the Village's staff discovered Hathcock unresponsive and called for an ambulance. When emergency-room physicians attempted to insert a ventilation tube into Hathcock's trachea, they found the missing dental bridge. The physicians extracted the bridge and transferred Hathcock to an intensive-care unit, but she died soon thereafter. Hathcock's official cause of death was pulmonary edema, pneumothorax, and aspiration.

Karen Miller, Hathcock's daughter,[2] filed health care liability claims against the Village, Metrostat, and Dr. Williams,[3] alleging their respective failures to timely discover the bridge led to her mother's death. Miller filed four separate expert reports to satisfy the Act's requirements. *See id.* § 74.351(i). Three reports discussed the respective conduct of one of the three defendants, while the fourth report, by Dr. Ravi Patel, discussed the medical cause of Hathcock's death.

Each defendant moved to dismiss Miller's claims for failure to serve adequate expert reports. *See id.* § 74.351(l). The trial court found the reports deficient but granted Miller an

[1] The term "stat" is generally "reserved for potentially life-threatening circumstances." William Wesp, *Using STAT Properly*, RADIOLOGY MGMT. 26 (Jan./Feb. 2006).

[2] Miller sues individually and as a representative of Hathcock's estate. Hathcock's other daughter, Betty Crockett, is also a Petitioner, and sues individually. We refer to them collectively as "Miller."

[3] Our references to Dr. Williams includes Richard M. Williams, M.D., P.L.L.C., which is also a party to this appeal.

extension to cure the deficiencies. After Miller amended the reports, the trial court denied the defendants' renewed motions to dismiss. The court of appeals reversed, holding the trial court abused its discretion in denying the motions to dismiss as to all three defendants. ___S.W.3d___, 2016 WL 4575536, at *10 (Tex. App.—Dallas 2016). Miller petitioned for review in this Court.

We review a trial court's ruling on the adequacy of an expert report for abuse of discretion. *Van Ness v. ETMC First Physicians*, 461 S.W.3d 140, 142 (Tex. 2015) (per curiam); *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 rules without reference to guiding rules or principles." *Van Ness*, 461 S.W.3d at 142. When reviewing matters committed to the trial court's discretion, "the reviewing court may not substitute its judgment for that of the trial court." *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992).

The standard for serving an adequate expert report is well established. The Act requires a plaintiff asserting a health care liability claim to serve each defendant with an expert report that includes "a fair summary of the expert's opinions . . . regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damage claimed." TEX. CIV. PRAC. & REM. CODE § 74.351(r)(6).

A trial court must sustain a challenge to a report's adequacy if the report does not represent an "objective good faith effort" to 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. *Id.* § 74.351(l). A good-faith effort must "provide enough information to fulfill 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." *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002) (per curiam); *see also Palacios*, 46 S.W.3d at 879.[4] A trial court may read several reports in concert in determining whether a plaintiff has made a good-faith effort to comply with the Act's requirements. TEX. CIV. PRAC. & REM. CODE § 74.351(i); *TTHR Ltd. P'ship v. Moreno*, 401 S.W.3d 41, 43 (Tex. 2013) (noting section 74.351(i) "authoriz[es] fulfilling the expert report requirements by serving multiple reports").

The defendants contend Miller's four reports—even when read together— do not constitute a good-faith effort because Dr. Patel's medical-causation report does not discuss the conduct of any particular defendant.[5] The court of appeals agreed, concluding that Dr. Patel's report was independently insufficient because it "does not state that he reviewed any of the other expert reports in reaching his conclusions," and thus the court could not "determine whose conduct Dr. Patel's causation opinion implicates." 2016 WL 4575536, at *4.

We disagree. Dr. Patel's report on the medical cause of Hathcock's death is brief, but substantive:

> I was a physician at Doctors Hospital of Dallas and treated Ms. Betty Ruth Hathcock as a patient on March 23 and 24, 2013 at Doctors Hospital arriving by EMS ambulance from the nursing facility the morning of March 23, 2013. When

[4] "We have explained that a 'good faith effort' in this context simply means a report that does not contain a material deficiency. Therefore, an expert report that includes all the required elements[,] and that explains their connection to the defendant's conduct in a non-conclusory fashion[,] is a good faith effort." *Samlowski v. Wooten*, 332 S.W.3d 404, 409–10 (Tex. 2011) (internal citations omitted).

[5] The defendants argue that Miller cannot respond with arguments regarding the reports that she did not make in the trial court. We disagree. *See Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 764 n.4 (Tex. 2014) ("We do not consider *issues* that were not raised in the courts below, but parties are free to construct new *arguments* in support of issues properly before the Court."). Miller defended the adequacy of the reports in the trial court, and we may address her arguments on that issue.

> Ms. Hathcock presented to the hospital, it appears she aspirated on her dentures[6] as this was found in the back of her mouth.
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> . . . . Ms. Hathcock expired on March 24, 2013. Her final diagnosis was cardiorespiratory failure secondary to anoxic brain injury secondary to cardiac arrest. Had the lodged denture implant been timely discovered, and had she received appropriate medical treatment to remove the denture implant at an earlier stage, it is reasonably medically probable that Ms. Hathcock would have survived.
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> It is my medical opinion, based upon my care and treatment of Ms. Hathcock and in all reasonable probability, that the denture implant lodged in the throat/trachea area of her airway was the cause of the aspiration which produced the pulmonary edema and pneumothorax which, collectively, was a proximate cause of her death.

The court of appeals rejected Dr. Patel's report because it was unable to ascertain "whose conduct" it implicated, and refused to read his report alongside the others for the same reason. 2016 WL 4575536, at *4. But the Act allows a plaintiff to use multiple expert reports to satisfy any of the Act's requirements. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(i). We have explained that section 74.351(i) "provides that '*any requirement* of this section' can be fulfilled 'by serving reports of separate experts.'" *In re Buster*, 275 S.W.3d 475, 477 (Tex. 2008) (per curiam) (quoting *Lewis v. Funderburk*, 253 S.W.3d 204, 208 (Tex. 2008) (per curiam)).

The court of appeals' decision contradicts the Act's explicit authorization of the use of multiple expert reports. Dr. Patel's report simply articulates the medical event that in reasonable medical probability caused Hathcock's death: the delay in discovering the dental bridge in her trachea. He did not need to specifically name the person who caused the delay or otherwise outline the conduct of a particular defendant who caused that delay because the other reports supplied that information. *See Moreno*, 401 S.W.3d at 44.

[6] Although Dr. Patel describes the object lodged in Hathcock's throat as "dentures," or a "denture implant," others refer to it as a "dental bridge" or "bridge."

We first discuss Dr. Williams, the radiologist who reviewed Hathcock's chest x-ray. Dr. Williams contends that, even when considered together, the reports fail to link his breach of any applicable standard of care to Hathcock's injury. We disagree. Dr. David Naegar's report opined that the radiologic standard of care required Dr. Williams to "detect and report the high density foreign body which is visualized in the proximal trachea," and that "such a finding warrants an immediate phone call to the ordering provider given the need for an intervention (foreign object removal) to prevent possible harm." According to Dr. Naeger's report, Dr. Williams breached this standard of care by:

- Failing to detect and report the high density foreign body which is visualized in the proximal trachea area in the frontal and lateral view chest x-rays dated 3/22/13, 9:51 a.m., and in

- Failing to contact and alert the ordering provider on an immediate basis of the need for an intervention for removal of a foreign object to prevent possible harm.

Dr. Naegar stated Dr. Williams's failure "delayed a timely removal of the foreign body" and that "not removing the foreign body in a timely manner can lead to aspiration, which can be deadly. Aspiration was listed on Hathcock's death certificate as one of the 'significant conditions contributing to death.'"

The court of appeals found Dr. Naegar's opinion insufficient because he stated only that the failure to timely remove the foreign body "can" lead to aspiration, which "can" be deadly. 2016 WL 4575536, at *6. But that reading fails to credit the entirety of Dr. Naegar's report. *See Van Ness*, 461 S.W.3d at 144 (noting the propriety of "fully credit[ing]" all of an expert's statements and opinions, as opposed to viewing them in isolation). Dr. Naegar also stated his interpretation of the x-rays was "consistent with the conditions stated in the death certificate as the cause of Hathcock's death." In relevant part, Dr. Naeger noted the death certificate's "diagnosis of

'aspiration' . . . is demonstrated on [Metrostat's x-ray] in which a foreign object is noted in the airway, consistent with a foreign body aspiration." Read in context, Dr. Naeger opined that aspiration *can* be deadly and that it *was* deadly in this case.

We hold that Dr. Naegar's report adequately explains "how and why" Dr. Williams's breach of the standard of care caused Hathcock's aspiration and subsequent death, as his report "make[s] a good faith effort to explain, factually, how proximate cause is going to be proven." *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 460 (Tex. 2017) (noting that an expert report must explain both foreseeability and cause-in-fact in order to satisfy the Act). With regard to foreseeability, Dr. Naegar makes clear that failing to identify the lodged dental bridge and alert appropriate personnel could result in harm. As to cause-in-fact, Dr. Naegar concluded that failure delayed timely removal, which caused Hathcock to aspirate. In sum, Dr. Naegar provides a more-than-adequate summary of the applicable standard of care (to timely detect the foreign body visualized in the x-ray and notify others), how Dr. Williams breached that standard (failure to timely detect and notify), and how that breach caused Hathcock's death (aspiration).

Even if Dr. Naeger's use of "can" rendered his report insufficient, Dr. Patel's report remedies that deficiency. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(i). The two reports connect on a factual understanding of the same event: the delay in discovering and removing the dental bridge. *See Moreno*, 401 S.W.3d at 43. Dr. Naegar's report explains how Dr. Williams breached the standard of care and how that breach caused a delay in the discovery of the dental bridge, while Dr. Patel's report explains how the delay caused the series of pulmonary issues leading to Hathcock's death. Reading the reports together, we conclude that the trial court could have

reasonably determined that the reports represented a good-faith effort to summarize the basis for Dr. Williams's alleged liability. *See Bowie*, 79 S.W.3d at 53. When read together, the two reports provide enough information to (1) inform Dr. Williams of the conduct called into question and (2) allow the trial court to conclude Miller's claims have merit. *See Palacios*, 46 S.W.3d at 879.

We also hold the trial court could have reasonably determined the reports represented a good-faith effort to describe the basis for Metrostat's liability, based on the conduct of its radiologic technologist who took the x-rays. *See Bowie*, 79 S.W.3d at 53. In support of her claims against Metrostat, Miller relies on the reports of Dr. Naegar, Dr. Patel, and Christi Carter, a specialist in radiologic sciences and techniques. With regard to the applicable standard of care and breach, Carter opined:

> The standard of care for a reasonable and prudent radiologic technologist in taking these images would have been for [the Metrostat technician] to examine the patient, in this case Ms. Betty Hathcock, look in and around her bed, and question the nursing home staff about any metal that could be in her body. A reasonable and prudent radiologic technologist should have then repeated the images or at least the lateral image and, if the artifact remained in the same general vicinity, should have then alerted the staff of the facility, the ordering physician and the interpreting radiologist of a possible foreign body. It is apparent that the actions of [the Metrostat technician] did not meet this standard of care.
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> . . . . Upon review of the AP and Lateral Chest X-ray images dated March 22, 2013, it is obvious on the images that an artifact is present which is inconsistent with that anatomical area. The appropriate standard of care would be for [the Metrostat technician] to have noted this obvious artifact, alerted the nursing home staff, and contact Metrostat Diagnostic Services to alert the ordering physician and/or the interpreting radiologist of the potential hazard. It is apparent that the actions of [the Metrostat employee] did not meet this standard of care.

Carter concluded that Metrostat's failure to recognize the artifact and notify appropriate personnel "caused a delay of [Hathcock] receiving proper and medical attention to address and extract the foreign body."

Carter's report illustrates how and why Metrostat's failure to discover and report the bridge's presence on the images resulted in a delay, while Dr. Patel's report explains how the delay caused the series of pulmonary issues resulting in Hathcock's death. Read together, the trial court could have concluded that the two reports provided enough information to (1) inform Metrostat of the conduct called into question and (2) allow the trial court to conclude Miller's claims have merit. *See* TEX. CIV. PRAC. & REM. CODE § 74.351(i); *Palacios*, 46 S.W.3d at 879. We hold the trial court did not abuse its discretion in denying Metrostat's motion to dismiss.

In support of her claim against the Village, Miller relied on the expert reports of Dr. Patel and Dr. Teresa Albright, a specialist in assisted-living facilities. Dr. Albright opined on a number of standards of care applicable to the Village, including (1) when the Village's employees were unable to find the missing bridge, they should have checked Hathcock's throat and/or alerted Dr. LeJeune that it was missing, and (2) the Village should have acquiesced to Miller's request that it transport Hathcock to the ER that evening, instead of waiting for the x-ray results.[7] The court of appeals held that the report failed to establish causation and was conclusory with regard to several of the articulated standards of care.

The court of appeals' real concern appears to be the *believability* of Dr. Albright's articulated standards of care, not the manner in which she stated them.[8] Our inquiry is not so exacting. Dr. Albright was qualified to opine on the applicable standards of care and did so, as her report contains specific information about what, in her opinion, the applicable standards of care

[7] Dr. Albright articulated several other standards of care, but because we find these sufficient, we need not address the others. *See Certified EMS, Inc. v. Potts*, 392 S.W.3d 625, 632 (Tex. 2013).

[8] *See* 2016 WL 4575536, at *9 ("Her report fails to explain why a healthcare provider should ignore a doctor's orders to wait for x-ray results and instead follow the orders of a family member.").

required the Village to do differently. *Cf. Palacios*, 46 S.W.3d at 880. At this preliminary stage, whether those standards appear reasonable is not relevant to the analysis of whether the expert's opinion constitutes a good-faith effort.

Dr. Albright explained that the Village knew Hathcock's dental bridge was missing, that Hathcock's voice sounded raspy, and that, under these circumstances, the applicable standard of care required the Village to check Hathcock's throat for the missing dental bridge, inform the physician the bridge was missing, and transport Hathcock to the emergency room upon Miller's request. The report states the Village did none of these things, and that the breaches of those standards "contributed to the delay" in Hathcock receiving emergent treatment. Reading this report together with Dr. Patel's report, which states that the delay in discovering the dental bridge caused the series of pulmonary issues leading to Hathcock's death, we hold the trial court could have reasonably determined that the reports represented a good-faith effort to summarize the causal relationship between the Village's failure to meet the applicable standards of care and Hathcock's injury. *See Bowie*, 79 S.W.3d at 53. That is, when read together, the reports provide enough information to (1) inform the Village of the conduct called into question and (2) allow the trial court to conclude Miller's claims against the Village have merit. *See Palacios*, 46 S.W.3d at 879.

We remain mindful that an "adequate" expert report "does not have to meet the same requirements as the evidence offered in a summary-judgment proceeding or at trial." *Scoresby v. Santillan*, 346 S.W.3d 546, 556 n.60 (Tex. 2011) (quoting *Palacios*, 46 S.W.3d at 879). Whether each defendant is liable for Hathcock's death is not the question at this stage; that will be answered further in the litigation process. The only question here is whether Miller's four expert reports provided enough information for the trial court to conclude they constituted a good-faith effort.

The trial court had discretion—"indeed it was incumbent on the trial court," *Van Ness*, 461 S.W.3d at 144—to review the reports and decide whether they demonstrated a good-faith effort to show that Miller's claims had merit. For the reasons stated, we conclude that the court of appeals erred by reversing the trial court's order.

We grant the petition for review. Without hearing oral argument, *see* TEX. R. APP. P. 59.1, we reverse the court of appeals' judgment and remand the case to the trial court for further proceedings consistent with this opinion.

Opinion delivered: December 15, 2017