

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00278-CV

Janelle K. House, D.O.; Janelle House, P.A.; and Rockdale Blackhawk, LLC, Petitioners

v.

Charles McCartney and Carla McCartney, Respondents

**FROM THE DISTRICT COURT OF MILAM COUNTY, 20TH JUDICIAL DISTRICT
NO. CV37307, HONORABLE JOHN YOUNGBLOOD, JUDGE PRESIDING**

MEMORANDUM OPINION

Janelle K. House, D.O.; Janelle House, P.A.; and Rockdale Blackhawk, LLC (collectively, “petitioners”) filed an unopposed petition for permissive interlocutory appeal, seeking to invoke our jurisdiction to review an interlocutory order. *See* Tex. Civ. Prac. & Rem. Code § 51.014(d), (f); *see also* Tex. R. App. P. 28.3 (establishing procedure for permissive appeals in civil cases). The petitioners argue that the trial court’s order denying their summary-judgment motions decided a controlling question of law about which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See* Tex. Civ. Prac. & Rem. Code § 51.014(d). For the following reasons, we will deny the petition.

The underlying dispute concerns the applicable statute of limitations in a healthcare-liability lawsuit brought by respondents Charles McCartney and Carla McCartney in February 2016.

The McCartneys' suit alleged, among other claims, that the petitioners failed to inform Charles of the results of his April 20, 2010 CT scan and to refer him to a specialist based on those results. On February 11, 2015, Charles was diagnosed with adenocarcinoma at the same site where a mass appeared on the April 20, 2010 CT scan. The petitioners assert that they moved for summary judgment contending that the McCartneys' cause of action was barred by the two-year statute-of-limitations period governing healthcare-liability claims because the date of the alleged tort is ascertainable from the facts of the case and that it occurred "on or around" April 20, 2010.¹ They assert that the respondents argued in opposition that an "ascertainable date" must be a "precise" date and could not be a date "on or around" the date that the CT scan was performed. The trial court denied the petitioners' summary-judgment motions. The trial court did not state the basis for its ruling; instead, it stated only that the motions "are hereby denied."

In an amended order, the trial court also granted the petitioners permission to appeal the interlocutory order and framed the controlling question of law as: "Did the applicable statute of limitations in § 74.251(a) commence to run on an ascertainable date more than two years before [the McCartneys] filed suit?" After carefully reviewing the petition and its attachments, we conclude that the petitioners have not clearly established that the trial court decided a controlling question of law about which there is substantial ground for a difference of opinion. *See Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Doe*, No. 13-13-00463-CV, 2013 WL 5593441,

¹ The petitioners did not include the summary-judgment motions and response with the petition for permissive appeal. Therefore, we base our summary of the parties' arguments on the description that petitioners provided in their petition. It is not clear from the petition whether evidence was attached to the motions or to the response. Also, we note that there are multiple defendants, but only three of those defendants filed summary-judgment motions.

at *2 (Tex. App.—Corpus Christi Oct. 10, 2013, no pet.) (mem. op.) (“Without a substantive ruling by the trial court as to why it denied the Church’s motion, no controlling question of law has been presented for our analysis.”); *WC Paradise Cove Marina, LP v. Herman*, No. 03-13-00569-CV, 2013 WL 4816597, at *1 (Tex. App.—Austin Sept. 6, 2013, no pet.) (mem. op.); *King-A Corp. d/b/a McDonald’s, Robstown v. Wehling*, No. 13-13-00100-CV, 2013 WL 1092209, at *3 (Tex. App.—Corpus Christi Mar. 14, 2013, no pet.) (mem. op.); *see also* Tex. R. App. P. 28.3(e)(4). Accordingly, we deny the petition for permissive appeal.

Cindy Olson Bourland, Justice

Before Justices Puryear, Field, and Bourland

Filed: August 31, 2017