Case Summaries
September 15, 2023

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OPINIONS

MEDICAL LIABILITY

Health Care Liability Claims

Uriegas v. Kenmar Residential HCS Servs., Inc., ___ S.W.3d ___, 2023 WL ___ (Tex. Sept. 15, 2023) (per curiam) [22-0317]

The issue in this Chapter 74 case is whether two expert reports provide a fair summary of the experts' opinions regarding the standard of care and breach elements of a negligence claim against a residential care facility.

Brandon Uriegas, a nonverbal adult with intellectual and physical disabilities, resided at a residential care facility operated by Kenmar. Uriegas fell while showering and was treated for scalp lacerations. The next day, Uriegas fell in the bathroom again, allegedly while unsupervised, and did not receive an immediate medical evaluation. When Uriegas could not stand the following day, Kenmar staff took Uriegas to the hospital where he was diagnosed with a fractured hip and femur. Uriegas's guardian sued Kenmar and provided expert reports. Cumulatively, the reports state that after Uriegas fell the first time, Kenmar should have closely monitored Uriegas, especially while using the bathroom, and that Kenmar should have sought an immediate medical assessment of Uriegas after the second fall because Uriegas could not verbalize any pain or discomfort. The trial court denied Kenmar's motion to dismiss under Chapter 74 on the basis that the reports insufficiently described the applicable standard of care and breach of that standard. Agreeing with Kenmar, the court of appeals reversed.

The Supreme Court reversed the court of appeals, holding that the reports together provide a fair summary of the applicable standard of care and breach, namely, increased monitoring after a fall and medical assessments for nonverbal patients. That Kenmar disagrees about the appropriate standard of care is not a reason to reject the expert report at this stage of the case.

JURISDICTION

Appellate

In re A.B., ___ S.W.3d ___, 2023 WL ___ (Tex. Sept. 15, 2023) (per curiam) [22-0864]

The issue is whether an appellant can consolidate two separate appeals from a single judgment in one court of appeals by moving to consolidate in one court of appeals and voluntarily dismissing the appeal in another, when both courts of appeals have statutory jurisdiction to hear the case and no party objects.

In Gregg County, the trial court terminated Mother's and Father's parental rights in one trial court proceeding. Both the Sixth and Twelfth Courts of Appeals have jurisdiction to hear appeals from Gregg County. Father noticed his appeal to the Twelfth Court, and Mother to the Sixth Court. Father then amended his notice of appeal to reflect that he was appealing to the Sixth Court under the same case number as Mother. Father also moved to dismiss his appeal in the Twelfth Court, and the Twelfth Court granted his motion. After briefing was complete, the Sixth Court determined that it lacked jurisdiction over Father's appeal because the Twelfth Court had acquired dominant jurisdiction, and Father's amended notice of appeal did not properly invoke the Sixth Court's jurisdiction.

The Supreme Court reversed, holding that Father's amended notice of appeal attempted compliance with the rule of judicial administration requiring consolidation of such cases. The Sixth Court acquired dominant jurisdiction when Father indicated his lack of intent to prosecute the appeal in the Twelfth Court.