

# IN THE SUPREME COURT OF TEXAS

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No. 07-0227

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WENDY COLLINI, M.D., PETITIONER,

v.

MARTHA PUSTEJOVSKY, RESPONDENT

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

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## PER CURIAM

Martha Pustejovsky filed this suit claiming Dr. Wendy Collini improperly continued to prescribe a medication that caused her to develop tardive dyskinesia, a debilitating brain disease. As required by statute, within 120 days of filing Pustejovsky served a curriculum vitae and expert report signed by Dr. Paul Haberer supporting her claim.<sup>1</sup> Dr. Collini moved for dismissal and attorney's fees on the ground that the expert report was inadequate,<sup>2</sup> but the trial court denied the motion.

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<sup>1</sup> TEX. CIV. PRAC. & REM. CODE § 74.351(a).

<sup>2</sup> *Id.* § 74.351(b).

Dr. Collini filed a timely interlocutory appeal with the Second Court of Appeals, which dismissed for want of jurisdiction.<sup>3</sup> For the reasons stated today in *Lewis v. Funderburk*,<sup>4</sup> we hold that Dr. Collini's motion seeking dismissal and fees was a motion pursuant to section 74.351(b), and thus reviewable by interlocutory appeal when the trial court denied it.<sup>5</sup> The court of appeals erred by concluding otherwise.

Accordingly, we grant the petition for review, and without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals' judgment and remand the case to that court to consider the remaining arguments raised by the interlocutory appeal.

OPINION DELIVERED: April 11, 2008

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<sup>3</sup> \_\_\_\_ S.W.3d \_\_\_\_.

<sup>4</sup> \_\_\_\_ S.W.3d \_\_\_\_ (Tex. 2007).

<sup>5</sup> TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).