

IN THE SUPREME COURT OF TEXAS

No. 08-0009

MIKE BISMAR, M.D., PETITIONER,

v.

DOROTHY A. MOREHEAD, VAUGHN R. MOREHEAD AND
JAMES P. MOREHEAD, III, INDIVIDUALLY AND AS HEIRS AT LAW OF
GLORIA MOREHEAD, DECEASED, RESPONDENTS

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

PER CURIAM

Dorothy A. Morehead, Vaughn R. Morehead, and James P. Morehead, III filed this suit on behalf of Gloria Morehead, deceased, claiming Mike Bismar, M.D. failed to timely diagnose and treat Gloria for shock due to an internal hemorrhage she sustained after a fall in the hospital. The Moreheads served a curriculum vitae and expert report supporting their claim within 120 days of filing, as required by statute. TEX. CIV. PRAC. & REM. CODE § 74.351(a). Dr. Bismar moved for dismissal and attorney's fees on the ground that the expert report was inadequate, but the trial court granted the Moreheads 30 days to cure deficiencies in the report and then denied the motion. *Id.* § 74.351(b), (c).

Dr. Bismar filed a timely interlocutory appeal with the Second Court of Appeals, which dismissed for want of jurisdiction. ___ S.W.3d ___. For the reasons stated in *Lewis v. Funderburk*, 253 S.W.3d 204 (Tex. 2008), we hold that Dr. Bismar'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. TEX. GOV'T CODE § 51.014(a)(9). 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: August 29, 2008