IN THE SUPREME COURT OF TEXAS

NO. 08-0231

OMAHA HEALTHCARE CENTER, LLC, PETITIONER,

v.

WILMA JOHNSON, ON BEHALF OF THE ESTATE OF CLASSIE MAE REED, DECEASED, RESPONDENT

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

JUSTICE JOHNSON delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE WAINWRIGHT, JUSTICE GREEN, JUSTICE WILLETT, and JUSTICE GUZMAN joined.

JUSTICE LEHRMANN filed a dissenting opinion, in which JUSTICE MEDINA joined.

In this case we consider whether claims against a nursing home regarding a patient's death alleged to have been caused by a brown recluse spider bite are health care liability claims (HCLCs) that required an expert report to be served. The trial court and court of appeals held that they were not. We disagree.

I. Background

Wilma Johnson, on behalf of the estate of her deceased sister, Classie Mae Reed, filed suit against Omaha Healthcare Center (Omaha), a nursing home. Johnson alleged that while Reed was being cared for by Omaha she was bitten by a brown recluse spider and died. Johnson asserted that

Omaha had a duty to use ordinary care in maintaining its premises in a safe condition and breached its duty by failing to (1) inspect the premises for spider and insect infestations, (2) properly clean the premises, (3) institute proper pest control policies and procedures, and (4) take the necessary actions to prevent insect and spider infestations.

Omaha filed a motion to dismiss on the grounds that Johnson's claims were HCLCs and she did not serve an expert report as required by statute. *See* TEX. CIV. PRAC. & REM. CODE § 74.351 (a), (b)[1] (stating that an HCLC claimant must serve an expert report within 120 days of filing suit and a trial court shall dismiss the claim if no report is served). Johnson responded that her claims were matters of ordinary negligence and did not fall under the statutory definition of "health care liability claim." The trial court denied Omaha's motion and Omaha filed an interlocutory appeal. *See id.* § 51.014. The court of appeals affirmed. 246 S.W.3d 278. We reverse the judgment of the court of appeals and remand the case to the trial court with instructions to dismiss the case and consider Omaha's request for attorney's fees and costs.

II. Discussion

As relevant to this case an HCLC is

> a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

[1] Section 74.351 was amended after Johnson's cause of action accrued, and the prior law is applicable to Johnson's claim. *See* Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 10.01, 2003 Tex. Gen. Laws 847, 875, *amended by* Act of May 18, 2005, 79th Leg., R.S., ch. 635, § 1, 2005 Tex. Gen. Laws 1590, 1590. At the time of Reed's injury, the statute required an expert report to be served within 120 days of the "claim" being filed. It now requires that an expert report be filed within 120 days of the filing of the "original petition." Because the amendment has no impact on our analysis, for ease of reference we will cite the current version of the statute.

Id. § 74.001(a)(13). "Health care" is

> any act or treatment performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

Id. § 74.001(a)(10); *see Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 847 (Tex. 2005) (describing health care as "broadly defined"). "Safety" is not defined in the statute, so "we apply its meaning as consistent with the common law [which is] the condition of being 'untouched by danger; not exposed to danger; secure from danger, harm or loss.'" *Diversicare*, 185 S.W.3d 855 (quoting BLACK'S LAW DICTIONARY 1336 (6th ed. 1990)).

The court of appeals concluded that the claim was a safety claim and under section 74.001(a)(13), a safety claim must be "'directly related to health care' to be actionable as an HCLC." 246 S.W.3d at 284. The court then concluded that because Johnson's claims were neither integral to nor inseparable from the health care and nursing services Omaha provided to Reed, they were not HCLCs. *Id.* at 287.

In this Court, Omaha asserts that Johnson's claim is a safety claim directly related to health care and the court of appeals incorrectly determined otherwise.[2] Under such standard, Johnson's claim against Omaha is an HCLC if it is for a departure from accepted standards of safety directly related to "any act . . . that should have been performed or furnished by [Omaha] to, or on behalf of [Reed] during [Reed's] medical care, treatment, or confinement." *See* TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10), (13).

[2] Omaha does not challenge the court of appeals' conclusion that a safety claim under section 74.001(a)(13) must be directly related to health care. We agree with Omaha that Johnson's claim is directly related to health care and do not address the issue of whether it must be.

In order to determine whether a claim is an HCLC, we consider the underlying nature of the claim. *Yamada v. Friend*, 335 S.W.3d 192, 196 (Tex. 2010). Artful pleading cannot alter that nature. *Id.*

The services a nursing home provides to its patients during their confinement include meeting patients' fundamental needs. *See Diversicare*, 185 S.W.3d at 849. Part of the fundamental patient care required of a nursing home is to protect the health and safety of the residents. 40 TEX. ADMIN. CODE § 19.1701; *see id.* § 19.401(b) (providing that nursing home residents have a right to safe, decent, and clean conditions). A nursing home facility "must provide a safe, functional, sanitary, and comfortable environment for residents" and "must . . . maintain an effective pest control program." *Id.* § 19.309(1)(c). In its pest control program a nursing home must "use the least toxic . . . effective insecticides." *Id.* § 19.324.

The court of appeals concluded that just because there are regulations requiring pest control in nursing homes does not mean that the regulations are related to health care. 246 S.W.3d at 286-87. It found "no indication pest control judgments are actually, as opposed to theoretically, based on the physical care the patients require or implicate the medical duty to diagnose and treat." *Id.* at 287.

But "health care" involves more than acts of physical care and medical diagnosis and treatment. It involves "*any act* performed or furnished, or that should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's . . . confinement." TEX. CIV. PRAC. & REM. CODE § 74.001(a)(10) (emphasis added). And nursing homes are required to provide more than physical care and treatment. They are required to take

actions to provide "quality care" which includes things such as safety of the environment. *See* TEX. HEALTH & SAFETY CODE § 242.001(a)(1), (8).

As noted above, Johnson alleged that Omaha failed to maintain the premises in a safe condition by failing to inspect the premises, failing to properly clean the premises, failing to institute proper pest control policies, and failing to prevent insect and spider infestations. Although Johnson pled that Omaha was liable because it failed to exercise ordinary care to conduct the referenced activities, the underlying nature of her claim was that Omaha should have but did not exercise the care required of an ordinarily prudent nursing home to protect and care for Reed while she was confined there. That is, she alleged that Omaha failed to take appropriate actions to protect Reed from danger or harm while caring for her. *See Diversicare*, 185 S.W.3d at 855. Those claims fell within the statutory definition of a health care liability claim. Because they did, the statute required the suit to be dismissed unless Johnson timely filed an expert report. *See* TEX. CIV. PRAC. & REM. CODE § 74.351 (a), (b).

III. Response to the Dissent

The dissent relies to a large degree on language derived from the dissenting opinions in *Marks v. St. Luke's Episcopal Hospital*, 319 S.W.3d 658 (Tex. 2010), and *Diversicare*, and the dissent's interpretation of the statutory definitions of "health care liability claim" and "health care." The dissenting opinions in *Marks* and *Diversicare* did not carry the day in those cases; they do not do so in this case. Further, we disagree with the dissent's interpretation of the statutory language. The dissent opines that interpreting the language of the statute to mean what it simply and plainly says—as we do—will cause confusion. We fail to see how. Consistently interpreting statutory

language according to its plain meaning and context, unless that interpretation yields an absurd or nonsensical result, honors the Legislature's intent and reduces confusion by giving legislators, the bar, and ordinary persons confidence that courts will interpret statutes to mean what they say. *See Molinet v. Kimbrell*, ___ S.W.3d ___, ___ (Tex. 2011) ("Our primary objective in construing statutes is to give effect to the Legislature's intent. The plain meaning of the text is the best expression of legislative intent unless a different meaning is apparent from the context or the plain meaning leads to absurd or nonsensical results.") (citations omitted).

It is not absurd or nonsensical for the Legislature to have required that a party filing suit against a health care provider must timely serve a statutory expert report. In a suit against a nursing home—a health care provider—based on allegations that the facility failed to take proper actions it should have "performed or furnished, . . . for, to, or on behalf of a patient during the patient's . . . confinement," a claimant must timely serve a statutory expert report. Johnson did not do so and her claim must be dismissed.

IV. Conclusion

Johnson's claim is an HCLC and should have been dismissed. Because Omaha requested its attorney's fees and costs in the trial court pursuant to Civil Practice and Remedies Code section 74.351(b)(1), the case must be remanded.

We grant Omaha's petition for review. Without hearing oral argument we reverse the court of appeals' judgment and remand the case to the trial court with instructions to dismiss Johnson's claims and consider Omaha's request for attorney's fees and costs.

Phil Johnson
Justice

OPINION DELIVERED: July 1, 2011