

IN THE SUPREME COURT OF TEXAS

No. 09-0665

TERRY LEONARD, P.A., AND APRIL DAWN HAIN, M.D., PETITIONERS,

v.

ANDRE GLENN, RESPONDENT

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

PER CURIAM

Respondent Andre Glenn sued petitioners Terry Leonard, P.A., and her supervisor, April Dawn Hain, M.D., both employees of Bexar County Hospital District d/b/a University Health System on health care liability claims after Leonard diagnosed Glenn with gout and prescribed Indomethacin, which led to Glenn's kidney failure. Leonard and Hain moved to dismiss the suit under section 101.106(f) of the Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE § 101.106(f), alleging that the suit was based on conduct within the general scope of their employment could have been brought against UHS. Glenn did not file a motion to amend his petition to name UHS as a defendant, but instead disputed whether he could have brought claims against UHS.

The trial court denied the defendants' motions to dismiss under section 101.106(f), as well as the defendants' objections to the plaintiff's expert report and motion to dismiss under TEX. CIV.

PRAC. & REM. CODE § 74.351, and the defendants brought an interlocutory appeal. The court of appeals affirmed on both issues. 293 S.W.3d 669, 684 (Tex. App.–San Antonio 2009).

While this case has been pending on appeal, we have decided *Franka v. Velasquez*, ___ S.W.3d ___ (Tex. 2011), holding among other things that, for purposes of TEX. CIV. PRAC. & REM. CODE § 101.106(f), a tort action is brought “under” the Texas Tort Claims Act, even if the government has not waived its immunity for such actions. ___ S.W.3d at ___. In light of *Franka*, we grant Leonard’s and Hain’s petition for review and without hearing oral argument, reverse the court of appeals’ judgment and remand the case to the court of appeals for further proceedings. TEX. R. APP. P. 59.1.

Opinion delivered: January 21, 2010