

IN THE SUPREME COURT OF TEXAS

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No. 06-0653
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IN RE MARY LOUISE WATKINS, M.D., RELATOR

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ON PETITION FOR WRIT OF MANDAMUS
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JUSTICE BRISTER delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE O'NEILL, JUSTICE WAINWRIGHT, JUSTICE MEDINA, and JUSTICE GREEN joined.

CHIEF JUSTICE JEFFERSON filed a concurring opinion, in which JUSTICE O'NEILL joined.

JUSTICE JOHNSON filed a concurring opinion.

JUSTICE WILLETT filed a concurring opinion.

Gary Jones filed this suit against Dr. Mary Louise Watkins, alleging she injured his eye in the course of treating a lesion on his face. Within 120 days of filing, he served what he purported to be an expert report.¹ Dr. Watkins objected that the report was merely a narrative of treatment, and

¹ See TEX. CIV. PRAC. & REM. CODE § 74.351(a).

failed to address the standard of care, breach, or causation.² Nevertheless, the trial court granted a 30-day extension.³ Jones filed a new report, which Dr. Watkins has not challenged.

Dr. Watkins then filed an interlocutory appeal and an original proceeding in the court of appeals asserting the trial court abused its discretion in granting an extension, and seeking an order of dismissal. The court of appeals dismissed the interlocutory appeal for want of jurisdiction and denied mandamus relief.⁴ Dr. Watkins seeks review of only the latter ruling, asking that we order the case dismissed.

We hold we cannot. The separate writings join issue again today on the question whether the item served was a deficient report or no report at all. But here it does not matter. If no report was served, interlocutory appeal was available,⁵ so mandamus is unnecessary. If the report was merely deficient, then an interlocutory appeal was prohibited,⁶ and granting mandamus to review it would subvert the Legislature's limit on such review. Legislative findings balancing the costs and benefits of interlocutory review must work both ways: having treated them with respect when they

² See *id.* § 74.351(r)(6); *Am. Transitional Care Ctrs. v. Palacios*, 46 S.W.3d 873, 879 (Tex. 2001) (holding report must disclose the treatment challenged and the reasons claims are meritorious to constitute a good-faith effort).

³ See TEX. CIV. PRAC. & REM. CODE § 74.351(c); see also *id.* § 74.351(l) (providing motion to dismiss should be granted if “the report does not represent an objective good faith effort to comply with the definition of an expert report”).

⁴ 192 S.W.3d 672.

⁵ *Badiga v. Lopez*, ___ S.W.3d ___, ___ (Tex. 2009).

⁶ TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9); see *Ogletree v. Matthews*, 262 S.W.3d 316, 321 (Tex. 2007).

encourage interlocutory review,⁷ we must treat them with the same respect when they discourage it.

Accordingly, the petition for mandamus is denied.⁸

Scott Brister
Justice

OPINION DELIVERED: January 23, 2009

⁷ See *In re McAllen Med. Ctr., Inc.*, ___ S.W.3d ___, ___ (Tex. 2008).

⁸ TEX. R. APP. P. 52.8(d).