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Texas Supreme Court remands \$14 million med-mal judgment for calculation of settlement credit

By Staff reports

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AUSTIN - On Friday, the Texas Supreme Court found that a trial court improperly denied defendant health care providers an offsetting settlement credit in a medical malpractice suit that resulted in a \$14 million judgment.

Court records show a petition for review was filed by Dr. Jesus Virlar and the Gonzaba Medical Group.

According to the high court's opinion, the case involves a woman who suffered brain injuries due to complications from gastric-bypass surgery. She and her minor daughter sued several defendants. After the daughter settled claims for loss of services and loss of consortium against one defendant for \$3 million, she nonsuited her claims against that defendant. A jury later awarded her more than \$14 million against other defendants.

"These defendants sought to apply the daughter's settlement against the award and to pay the future damages in periodic payments," the opinion states. "The trial court rejected these requests, and the court of appeals largely affirmed the judgment."

According to the opinion, the med-mal case presented two principal questions about how to calculate the trial court's judgment: whether to credit a settlement by a family member under Chapter 33 of the Civil Practice and Remedies Code; and whether to order periodic payments of damages for future medical expenses under Chapter 74 of the Texas Medical Liability Act.

The Supreme Court held that Chapter 33 required a credit for the daughter's settlement because her claims were for her mother's injury and that the result does not violate the Open Courts provision of the Texas Constitution.

Further, justices found that the TMLA required the trial court to order that at least some of the future damages be paid periodically.

The high court reversed the judgment in part and remanded the case to the trial court for further proceedings.

The case drew the interest of several groups, including the Texas Alliance for Patient Access.

"This was the first time that the Texas Supreme Court has addressed the issue of settlement credits since the Legislature amended the definition of claimant in 2003," said attorney Brent Cooper, author of TAPA's brief.

Cooper is a partner in the Dallas law firm of Copper & Scully. He specializes in medical liability litigation.

Supreme Court case No. 20-0923