

LAWSUIT DISMISSED FOR FAILURE TO FILE EXPERT REPORT

Murphy v. Russell

The plaintiff in this case brought suit against her anesthesiologist after he allegedly administered a general anesthetic without her consent. Plaintiff asserted claims for battery, breach of contract, and violations of the Deceptive Trade Practice-Consumer Protection Act (DTPA). When plaintiff failed to file an expert report within 180 days after filing suit, the defendant moved to dismiss the lawsuit, arguing that the claims were “health care liability claims” subject to the requirements of former article 4590i. The trial court granted the motion to dismiss. The court of appeals reversed the trial court’s judgment, reasoning that the plaintiff “does not allege and need not prove that Murphy [defendant] deviated from any standard of medical care, health care, or safety,” and therefore, the court of appeals concluded, no expert medical report was required.

The Texas Supreme Court rejected the court of appeals’ reasoning. The Court held that the plaintiff’s battery claim arises from treatment rendered by the defendant, and that “[i]n enacting former article 4590i, the Legislature intended health care liability claims to be scrutinized by an expert or experts before the suit can proceed.” Therefore, the Court found, the plaintiff cannot avoid the requirements of former article 4590i, including its expert report requirement and caps on damages, by filing a bare-bones pleading that asserts battery based on lack of consent.

With regards to the plaintiff’s DTPA claims, the Court found the plaintiff’s allegations were “nothing more than an attempt to recast [a] malpractice claim as a DTPA action” and plaintiff’s allegations “all have to do with whether the administration of a general anesthetic under all the circumstances met the standard of care for anesthesiologists.” As a result, the Court concluded that “all of her claims, including her DTPA claims, are ‘health care liability claims,’” subject to the requirements of former article 4590i that the plaintiff provide an expert report within 180 days of filing suit.

For additional information, please contact Rene Sowell (renes@gucl.com), Richard Schellhammer (res@gucl.com), or Bob Dawson (robertd@gucl.com).