

Molinet v. Kimbrell
54 Tex.Sup.Ct.J. 491
_____ S.W.3d _____
(2011)



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Facts

- On July 18, 2004, Dr. John Horan surgically repaired the tendon, after which Molinet re-injured it. Dr. Marque Allen performed a second operation later that year. Dr. Patrick Kimbrell, a wound treatment specialist, treated Molinet for several weeks beginning in early November 2004.

Facts

- In September 2005, Molinet filed suit against several parties seeking damages related to his injury and medical treatment. He sued Dr. Allen and various health care providers, but did not sue either Dr. Horan or Dr. Kimbrell. In both May and September 2006, Molinet amended his pleadings and added additional health care providers as defendants but still did not sue Dr. Horan or Dr. Kimbrell.

Facts

- On August 1, 2007, more than two-and-a-half years after either Dr. Horan or Dr. Kimbrell last treated Molinet, Dr. Allen moved to designate them as responsible third parties pursuant to section 33.004(a). The trial court granted Dr. Allen's motion on August 21, 2007. On August 24, 2007, Molinet amended his pleadings to join Drs. Horan and Kimbrell as defendants.

Trial Court

- Horan and Kimbrell moved for summary judgment, arguing that 74.251 provided a strict two-year statute of limitations for health care liability claims, despite the operation of section 33.004(e).

Trial Court

- The trial court denied the motion for summary judgment. Pursuant to agreement of the parties, the court authorized an interlocutory appeal. See *id.* § 51.014(d) (permitting a trial court to issue a written order for interlocutory appeal in a civil action if the parties agree to the order and agree that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation).

Court of Appeals

- Kimbrell and Horan contended section 74.251 contains an absolute two-year limitations period. Section 74.251 states:
 - Notwithstanding any other law and subject to Subsection (b), no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed.

Court of Appeals

- Molinet relied on section 33.004(e) of the Civil Practice and Remedies Code:
 - If a person is designated under this section as a responsible third party, a claimant is not barred by limitations from seeking to join that person, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person not later than 60 days after that person is designated as a responsible third party.

Court of Appeals

- The court of appeals explained that both Chapter 74 and Chapter 33 of the Code include a conflicts of law provision to be used in reconciling any potential conflicts with other provisions.
- *See* TEX. CIV. PRAC. & REM.CODE ANN. § 33.017 (Vernon 2008); TEX. CIV. PRAC. & REM.CODE ANN. § 74.002 (Vernon 2008).

Court of Appeals

- Section 74.002 of the Code provides that Chapter 74 will control to the extent there is any conflict between it and another chapter.
- TEX. CIV. PRAC. & REM.CODE ANN. § 74.002 (Vernon 2008).

Court of Appeals

- Section 33.017 of the Code states that the rights of the indemnified parties shall prevail to the extent there is conflict between Chapter 33 and any other chapter.
- TEX. CIV. PRAC. & REM. CODE ANN. § 33.017 (Vernon 2008).

Court of Appeals

- Section 74.251's use of the phrase "notwithstanding any other law" is instructive, however, and unequivocally expresses the Legislature's intent for section 74.251 to govern when its limitations period conflicts with other laws.

Court of Appeals

- Molinet also relied on the court of appeals' holding in *Pochucha v. Galbraith Engineering*, 243 S.W.3d 138 (Tex.App.- San Antonio 2007, pet. granted), as authority for the proposition that only claims specifically excluded by section 33.002(c) are excluded from the application of section 33.004(e).

Court of Appeals

- Unlike chapter 16, which was being analyzed in *Pochucha*, section 74.251 contains clear and unambiguous language that the two-year limitations period applies "[n]otwithstanding any other law." Therefore, *Pochucha* was clearly distinguishable from the instant case.

Court of Appeals

- Although both parties addressed the legislative history of section 74.251 in their briefs, the court did not resort to extra-textual factors because the statute is unambiguous.

Court of Appeals

- Molinet relied on “express” legislative intent of 33.004(e):
- When asked during floor debates whether the sixty day time period for a plaintiff to join a designated responsible third party, regardless of limitations, applied to a medical malpractice claim, Senator Ratliff responded:
- "Yes, if health care providers are going to have the benefit of the designation of responsible third parties, then they have to abide by the same rules as everyone else. This 60-day provision would apply in health care liability claims." S.J. of Tex., 78th Leg., R.S. 5005 (2003),

Court of Appeals

- In this case, the language of section 74.251 clearly provides an absolute two-year statute of limitations period "notwithstanding any other law."

Texas Supreme Court

- The Court first addressed its conflicts jurisdiction by looking to the dicta contained in *Moreno v. Palomino-Hernandez*, 269 S.W.3d 236 (Tex. App.—El Paso 2008, pet. denied).
- There, the court of appeals stated generally that section 33.004(e) allowed a physician to be named as a defendant after expiration of limitations and after having been designated as a RTP. The Supreme Court denied review of *Moreno*.
- Because the issue was tangentially “discussed” in *Moreno*, and because it conflicted with the court of appeals’ decision in *Molinet*, the Supreme Court exercised its conflicts jurisdiction.

Texas Supreme Court

- Molinet first argued that sections 74.251(a) and 33.004(e) did not conflict.
- He urged that section 33.004(e) did not change the statute of limitations by either altering when the limitations period begins to run or by tolling it for a certain period of time.
- Rather, he posited, section 33.004(e) simply provides that the statute of limitations is not applicable to the joinder of a party when that party has been designated as a responsible third party.

Texas Supreme Court

- In support of this argument, Molinet cited *Chilkewitz v. Hyson, 22 S.W.3d 825 (Tex. 1999)*. In *Chilkewitz*, the plaintiff named "Morton Hyson, M.D." as a defendant in a health care suit within the limitations period.
- After the limitations period had run, Hyson filed a motion for summary judgment alleging that he did not perform the surgery individually, but that it was performed by his professional association, "Morton Hyson, M.D., P.A."

Texas Supreme Court

- Hyson then argued that the "notwithstanding any other law" language in former Texas Revised Civil Statutes article 4590i, section 10.01, the predecessor to section 74.251, precluded the operation of Texas Rule of Civil Procedure 28.
- Rule 28 provides that "any . . . individual doing business under an assumed name may sue or be sued in its . . . assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted."

Texas Supreme Court

- But as Molinet pointed out, the Hyson Court also held that rule 28 was not a tolling provision that extended limitations:
 - But in all the foregoing cases, the issue was either when limitations began to run or whether limitations could be tolled or interrupted. Rule 28 concerns none of those issues. That procedural rule simply provides that if an entity conducts business under an assumed or common name, it may be sued in that name. Limitations is not tolled.

Texas Supreme Court

- Although the Court struggled to understand Molinet's argument, it ultimately rejected that 33.004(e) constituted any type of joinder provision.
- The Court also rejected that under chapter 74, the statute of limitations is only applicable when an action is "commenced" in the traditional sense – *i.e.*, named as a defendant rather than joined after designation under section 33.004(e).

Texas Supreme Court

- Rule 28 is predicated on the notion that a case has already commenced against the proper party, but the party's legal name is incorrect.

Texas Supreme Court

- In contrast, the effect of chapter 33 is not to statutorily determine when a suit is commenced against parties designated as responsible third parties. The filing and granting of a motion for leave to designate a person as a responsible third party does not artificially establish the "commencement" of the case against a party as of some date before the party was in fact joined. *See* TEX. CIV. PRAC. & REM. CODE § 33.004(i)

Texas Supreme Court

- The Court disagreed with Molinet's argument that the statutes are not in conflict as to the issue presented.
 - The limitations provision of section 74.251(a) would bar Molinet's action against Drs. Horan and Kimbrell, while section 33.004(e) would prevent that limitations provision from barring it.

Texas Supreme Court

- The Court relied on the legislative intent gleaned from the statute's clear, unambiguous language to hold:
- Section 74.251(a) controls limitations as to claims such as Molinet's against Drs. Horan and Kimbrell.
- Section 74.251(a) explicitly states that "notwithstanding any other law" a health care liability claim must be commenced within two years after "the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed." TEX. CIV. PRAC. & REM. CODE § 74.251(a).

Texas Supreme Court

- Finally, section 74.002(a) provides "in the event of a conflict between [chapter 74] and another law, including a rule of procedure or evidence or court rule, [chapter 74] controls to the extent of the conflict." *Id.* § 74.002(a).

Texas Supreme Court

- The Court disagreed that chapter 33's own conflict-of-law provision (33.017) informed the issue.

Texas Supreme Court

➤ Section 33.017 states:

- Nothing in this chapter shall be construed to affect any rights of indemnity granted by any statute, by contract, or common law. To the extent of any conflict between this chapter and any right to indemnification granted by statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

Texas Supreme Court

- Section 33.017 is not applicable in this situation for two reasons.
- First, while it preserves indemnity rights, it does not provide that chapter 33 generally controls over conflicting laws.
- Second, even if section 33.017 were a general conflict-of-law provision, this case does not concern the rights of indemnified parties.

Texas Supreme Court

- In support of their arguments that section 33.004(e) controls over section 74.251(a), Molinet and the dissent urged the Court to consider and give overriding weight to statements made by a senator during floor debates and published by unanimous consent in the Senate Journal.
- The Court declined to do so, explaining:
- Statements made during the legislative process by individual legislators or even a unanimous legislative chamber are not evidence of the collective intent of the majorities of both legislative chambers that enacted a statute. See *Gen. Chem. Corp. v. De La Lastra*, 852 S.W.2d 916, 923 (Tex. 1993).

Texas Supreme Court

- The Court explained:
- Moreover, the Legislature expresses its intent by the words it enacts and declares to be the law. See *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651 (Tex. 2006) ("Ordinarily, the truest manifestation of what legislators intended is what lawmakers enacted, the literal text they voted on.").

Texas Supreme Court

- When a statute's language is clear and unambiguous "it is inappropriate to resort to the rules of construction or extrinsic aids to construe the language." *Tex. Lottery Comm'n*, 325 S.W.3d at 637 (quoting *City of Rockwall*, 246 S.W.3d at 626); *Tex. Dep't of Protective and Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004); *St. Luke's Episcopal Hosp. v. Aqbor*, 952 S.W.2d 503, 505 (Tex. 1997)).

Texas Supreme Court

- The Court addressed the dissenting justices concerns:
- Before the Legislature enacted the statute of repose in 2003, we had recognized fraudulent concealment and open courts provision exceptions to the two-year statute of limitations. See Shah, 67 S.W.3d at 841; Morrison, 699 S.W.2d at 208; Neagle v. Nelson, 685 S.W.2d 11, 12 (Tex. 1985); Borderlon, 661 S.W.2d at 908-09.
- But, neither the language nor the context of section 74.251(b) (statute of repose) implies legislative intent for section 33.004(e) to be an exception to the express, clear language in sections 74.251(a) and 74.002(a).

Dissent

- As the Court acknowledges, we have repeatedly recognized that certain constitutional restrictions and common law doctrines may override the two-year limitations period established by section 74.251(a) of the Civil Practice and Remedies Code and its statutory predecessors.

Dissent

- Before the 2003 amendments to chapter 33 of the Civil Practice and Remedies Code, adopted as part of the sweeping tort reform implemented by House Bill 4, defendants in tort suits, including health care liability defendants, were permitted to attempt to shift liability to responsible third parties by joining them as third-party defendants.

Dissent

- The 2003 amendments to chapter 33, however, dramatically altered this third-party practice. Under the current version of the statute, the trier of fact may allocate a percentage of responsibility to a third party designated by a defendant, even if the party has not been made a party to the lawsuit.

Dissent

- But the defendant has "much to gain strategically by designating a responsible third party because the defendant has a possibility of shifting a large percentage of responsibility onto the responsible third party, thereby avoiding joint and several liability, . . ."

Dissent

- In the Senate proceedings to consider the Conference Committee Report on House Bill 4, the following exchange between Senator Hinojosa and Senator Ratliff, House Bill 4's sponsor and a member of the conference committee that crafted the substitute that was ultimately enacted, is recorded in the Senate Journal:

Dissent

- Senator Hinojosa: When a defendant names a responsible third party, as I understand it, the plaintiff has 60 days to bring the third party into the suit, even if limitations would otherwise have run against that person. . . . Is that true in a medical malpractice claim too, because on page 63 of the bill it seems to say that the two-year statute in those cases applies notwithstanding any other law?

Dissent

- Senator Ratliff: Yes, if health care providers are going to have the benefit of the designation of responsible third parties, then they have to abide by the same rules as everyone else. This 60-day provision would apply in health care liability claims.
- 78th Leg., R.S., Journal of the Texas Senate 5005 (citations omitted).

Dissent

- That exchange, which addresses the precise issue before the Court, was "ordered reduced to writing and printed in the Senate Journal" by unanimous consent "to establish legislative intent regarding HB4." *Id.* at 5003.

Dissent

- Moreover, contrary to the fundamental purposes of the reforms implemented in House Bill 4, the Court's reading of the statute will have the unintended consequence of encouraging lawsuits against health care providers. In the wake of today's decision, cautious health care liability claimants will be motivated to sue every health care provider involved in the patient's care, no matter how minimal their involvement, in order to circumvent an empty-chair defense by more likely responsible defendants.

Dissent

- It is apparent from the context in which section 74.251(a) and section 33.004(e) were enacted that section 74.251(a)'s "[n]otwithstanding any other law" language is not unambiguous. The Court's construction ignores section 74.251(b)'s impact, gives no effect to section 33.004(e)'s joinder provision in health care liability claims, and disrupts a carefully constructed scheme balancing the interests of both defendants and claimants, despite explicit expressions of contrary legislative intent.

Broad Impact

- Texas Supreme Court will not look at legislative history if the statute is plainly written.
- Texas Supreme Court will use 74.002's language to apply Chapter 74 in conflicting contexts.
- Texas Supreme Court indicates a willingness to interpret statutes in such a way as to recognize exceptions to the responsible third party statutory scheme.

Other Considerations

- Makeup of the Court
- Impact on Interpretation of Chapter 74
 - 74.301/74.303 & prejudgment interest
 - 74.301 & joint and several liability
- Impact on Other Provisions of HB 4
 - 41.0105