

Affirmed and Majority and Dissenting Opinions filed May 28, 2020.



Fourteenth Court of Appeals

NO. 14-18-00457-CV

**TEXAS CHILDREN'S HOSPITAL AND BAYLOR COLLEGE OF
MEDICINE, Appellants**

V.

**SHERRY KNIGHT, KENNY KNIGHT INDIVIDUALLY AND AS NEXT
FRIENDS OF K.K., Appellees**

**On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 2017-16713**

DISSENTING OPINION

Dr. Mark Murray's expert report is deficient as to causation. So, this court should reverse the trial court's order and remand this case with instructions to the trial court to dismiss the appellees/plaintiffs' claims with prejudice under section 74.351(b) of the Texas Civil Practice and Remedies Code. Because the court affirms the trial court's order, I respectfully dissent.

Dr. Murray, a board-certified hospitalist, serves as the sole expert as to causation for appellees/plaintiffs Sherry Knight and Kenny Knight, individually

and as next friends of K.K. (the “Knight Parties”). Proximate cause has two components: (1) foreseeability and (2) cause-in-fact.¹ For a negligent act or omission to have been a cause-in-fact of the harm, the act or omission must have been a substantial factor in bringing about the harm, and absent the act or omission—*i.e.*, but for the act or omission—the harm would not have occurred.² For Dr. Murray’s report to suffice as to causation, Dr. Murray would have to explain “how and why” the alleged negligence caused the amputation of Sherry’s³ hands and feet, give the basis for his statements, and link his conclusions to specific facts.⁴ Dr. Murray would have to explain how the allegedly negligent conduct caused Sherry’s injuries.⁵

The Knight Parties allege a direct negligence theory against Texas Children’s Hospital. They also allege negligence by various Baylor College of Medicine physicians (the “Baylor Physicians”) and various Texas Children’s nurses (the “Nurses”). Dr. Murray must draw a line directly from the alleged negligence of Texas Children’s, the Baylor Physicians, and the Nurses to a delay in Sherry’s diagnosis and proper treatment, to the amputation of Sherry’s hands and feet at St. Luke’s Hospital, weeks after Sherry was transferred from Texas Children’s to St. Luke’s.⁶

According to Dr. Murray, if the Baylor Physicians had evaluated Sherry properly after her surgery on April 2, 2015, the Baylor Physicians would have

¹ *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 460 (Tex. 2017).

² *Id.*

³ For ease of reference, Sherry Knight is referred to as “Sherry” in this opinion.

⁴ *See Abshire v. Christus Health Southeast Tex.*, 563 S.W.3d 219, 224 (Tex. 2018).

⁵ *See id.* at 226.

⁶ *See id.* at 225.

corrected her circulatory compromise by discontinuing Heparin on April 4, and within reasonable probability Sherry would not have developed necrosis at St. Luke's and had her hands and feet amputated weeks after being transferred (on April 7, 2015) from Texas Children's to St. Luke's.⁷

Even so, Dr. Murray acknowledges that “there was no evidence of significant necrosis in [Sherry] while she was at [Texas Children's] that would have led inevitably to amputations.” Dr. Murray also states:

There is no evidence in the medical records from [Texas Children's] that [Sherry] at [Texas Children's] during her stay there post-operatively had necrotic (i.e. dead) tissue in her hands or feet that would require amputation of her hands and feet at any time—there was discoloration and coolness and that was reported in nursing notes.⁸

Sherry did not develop necrosis in her hands and feet until after her April 7, 2015 transfer from Texas Children's to St. Luke's, and Sherry did not suffer amputation of those extremities until weeks after the transfer. Dr. Murray states in his report that he reviewed Sherry's medical records from both Texas Children's and St. Luke's. Thus, based on the St. Luke's medical records, Dr. Murray knows Sherry's condition and course of treatment during her weeks at St. Luke's. Yet, Dr. Murray makes only two statements about Sherry's hospitalization at St. Luke's: (1) Sherry was transferred to St. Luke's on April 7, 2015, and (2) Sherry's Heparin-Induced Thrombocytopenia (“HIT”) “was confirmed by St. Luke's testing later on.” Other than a positive HIT test, Dr. Murray says nothing about what happened at St. Luke's.

⁷ Dr. Murray concedes that it was appropriate for Sherry to have received Heparin during the operation and after the operation from April 2 through April 4.

⁸ (entire text in bold in the original).

- Did the doctors at St. Luke’s administer Heparin to Sherry during her stay there?
- If so, for how long and in what dosage?
- If the doctors at St. Luke’s continued to administer Heparin, did they choose that course because Sherry received Heparin during the period from April 4 through April 7 at Texas Children’s or would the doctors at St. Luke’s have ordered Heparin therapy for Sherry no matter what the Baylor Physicians had done as to Heparin?
- Did Sherry receive so much Heparin at St. Luke’s that she would have had her hands and feet amputated even if she had not received any Heparin at Texas Children’s during the April 4-7 period?

By not addressing what happened in the weeks between the transfer to St. Luke’s and the amputation of Sherry’s hands and feet (other than the positive HIT test at some point), Dr. Murray fails to explain how the allegedly negligent conduct of the Baylor Physicians in continuing to administer Heparin during the April 4-7 time period caused Sherry’s injuries. Likewise, Dr. Murray has not explained how the Nurses’ alleged negligence and the alleged direct negligence of Texas Children’s caused Sherry’s injuries. Dr. Murray has not drawn a line directly from the Baylor Physicians’ alleged negligence, the Nurses’ alleged negligence, or Texas Children’s alleged negligence to a delay in Sherry’s diagnosis and proper treatment, to the amputation of her hands and feet at St. Luke’s Hospital, weeks after Sherry’s Texas Children’s-to-St. Luke’s transfer.⁹ Though the Knight Parties and the majority rely heavily on the *Abshire* case, that case is not on point because, unlike the expert in *Abshire*, Dr. Murray did not draw a line in his report directly from the alleged negligence of each person to a delay in Sherry’s diagnosis and proper treatment, to the amputation of her hands and feet at St. Luke’s.¹⁰ The line

⁹ See *Abshire*, 563 S.W.3d at 225–26; *Hendricks v. Perales*, No. 05-16-01258-CV, 2017 WL 1075637, at *6 (Tex. App.—Dallas Mar. 21, 2017, no pet.); *Tenet Hosps. Ltd. v. Bernal*, 482 S.W.3d 165, 175 (Tex. App.—El Paso 2015, no pet.).

¹⁰ See *Greenville SNF, LLC v. Webster*, No. 05-18-00038-CV, 2018 WL 6716621, at *6 (Tex.

Dr. Murray began to draw stopped on April 7, weeks before Sherry suffered the injuries made the basis of this suit.¹¹

The insufficiency of Dr. Murray’s report as to causation applies to the Knight Parties’ direct-negligence claims against Texas Children’s, their vicarious-liability claims based on the Nurses’ alleged negligence, and their vicarious-liability claims based on the Baylor Physicians’ alleged negligence. Thus, the trial court abused its discretion by overruling the defendants’ objections as to causation and in denying Texas Children’s and Baylor College of Medicine’s motions to dismiss. This court should reverse the trial court’s order and remand this case with instructions to the trial court to dismiss the Knight Parties’ claims with prejudice under section 74.351(b) of the Texas Civil Practice and Remedies Code.¹²

/s/ Kem Thompson Frost
Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Spain and Poissant (Poissant, J., majority).

App.—Dallas Dec. 21, 2018, no pet.) (distinguishing *Abshire*) (mem. op.).

¹¹ *See id.*

¹² *See Abshire*, 563 S.W.3d at 225–26; *Hendricks*, 2017 WL 1075637, at *6; *Greenville SNF, LLC*, 2018 WL 6716621, at *6; *Tenet Hosps. Ltd.*, 482 S.W.3d at 175.