

Affirmed and Memorandum Opinion filed July 7, 2020.



In The
Fourteenth Court of Appeals

NO. 14-18-01051-CV

**TRI VO, INDIVIDUALLY AND AS A REPRESENTATIVE OF THE
ESTATE OF CASEY WRIGHT VO, KAIDA HARRIS-WRIGHT, AND
KAMI HARRIS-WRIGHT, Appellants**

V.

**VAIDYNATH IYER, MD AND GREATER HOUSTON PSYCHIATRIC
ASSOCIATES, PLLC, Appellees**

**On Appeal from the 127th District Court
Harris County, Texas
Trial Court Cause No. 2017-70483**

MEMORANDUM OPINION

Appellant Tri Vo challenges the trial court's dismissal of this lawsuit under the Texas Medical Liability Act.¹ Because Vo failed to challenge each independent ground asserted for dismissal, we affirm.

¹ See Tex. Civ. Prac. & Rem. Code §§ 74.001–.507.

Casey Wright Vo sought treatment from psychiatrist Vaidynaith Iyer for chronic depression and anxiety. Iyer prescribed Prozac, which is also known as fluoxetine. Under Iyer's care, Casey took various combinations of prescription medications for five years. Nearly one month after her last appointment with Iyer, Casey died. At that appointment, Iyer had increased Casey's fluoxetine dosage. According to the autopsy report, Casey's cause of death was fluoxetine poisoning.

Vo, Casey's husband, filed this lawsuit on behalf of himself and as a representative of Casey's estate and children. Vo brought claims against Iyer for wrongful death and medical malpractice negligence and against Greater Houston Psychiatric Associates under the doctrines of respondeat superior, alter ego, apparent or ostensible agency, and agency by estoppel. Vo alleged, "Casey Vo died as a result of a toxic level of Fluoxetine, caused by Dr. Iyers['] failure to monitor her drug levels and or interactions with other drugs." Vo served an expert report in which Steven Stanton, a podiatrist, opined that (1) Iyer had a duty of care to monitor Casey's fluoxetine levels and failed to do so, (2) Iyer's manner of care fell below the current standard of care of medical professionals who prescribe drugs, and (3) Iyer's "failure to warn of potential drug interactions and or potential side effects of the drugs he prescribed to Casey Vo . . . led to the lethal amount of Fluoxetine [in] her system."

Iyer and Greater Houston Psychiatric Associates filed objections to the expert report, challenging Stanton's expert qualifications and the sufficiency of his opinions on the applicable standard of care, breach of that standard, and causation. The trial court found that the report was "deficient on [Stanton's] prescription ability" but permitted Vo to serve an amended expert report. Vo served an amended report showing Stanton is "authorized by the State of Texas to prescribe drugs . . . including Prozac and Fluoxetine." Iyer and Greater Houston Psychiatric

Associates again moved to dismiss Vo’s claim, challenging (1) Stanton’s expert qualifications, and (2) the sufficiency of Stanton’s opinions on the basis that they are “vague and conclusory” as to the applicable standard of care and breach of that standard and on the basis that they are “speculative, vague, and conclusory” as to causation. The trial court sustained the objections to the expert report “in all things,” granted the motion to dismiss, and rendered a final take nothing judgment against Vo.

On appeal, Vo contends that Stanton is qualified to opine on the applicable standard of care, breach, and causation and that the expert report is not deficient as to causation. Vo does not assert on appeal that Stanton adequately addressed the applicable standard of care and breach of that standard.

The Texas Medical Liability Act entitles a defendant to dismissal of a healthcare liability claim if the defendant is not timely served with an expert report showing that the claim has merit. Tex. Civ. Prac. & Rem. Code § 74.351(b); *Scoresby v. Santillan*, 346 S.W.3d 546, 549 (Tex. 2011). If the expert report is deficient as to any element, the trial court may grant the claimant a single thirty-day extension to cure the report. Tex. Civ. Prac. & Rem. Code § 74.351(c).

We review a trial court’s ruling on a healthcare provider’s motion to dismiss a healthcare liability claim for an abuse of discretion. *Harvey v. Kindred Healthcare Operating, Inc.*, 578 S.W.3d 638, 644 (Tex. App.—Houston [14th Dist.] 2019, no pet.). In the absence of findings of fact or conclusions of law, we uphold a trial court’s ruling on a motion to dismiss on any theory supported by the record and infer any necessary findings of fact to support the ruling. *Id.* (citing *Rosemond v. Al-Lahiq*, 331 S.W.3d 764, 766 (Tex. 2011)). A trial court abuses its discretion if it acts in an unreasonable or arbitrary manner or without reference to any guiding rules or principles. *Larson v. Downing*, 197 S.W.3d 303, 304–05 (Tex.

2006) (per curiam); *Harvey*, 578 S.W.3d at 644.

When a trial court issues an adverse ruling without specifying the grounds, we presume the trial court considered all the asserted grounds supporting dismissal. See *RSL Funding, LLC v. Pippins*, 499 S.W.3d 423, 434 (Tex. 2016) (involving motion to stay litigation); see also *McAllen Hosps., L.P. v. Rodriguez*, No. 13-15-00362-CV, 2016 WL 3365788, at *2-3 (Tex. App.—Corpus Christi June 16, 2016, pet. denied) (mem. op.) (affirming trial court’s denial of motion to dismiss under Texas Medical Liability Act); *In re Elamex, S.A. de C.V.*, 367 S.W.3d 879, 888 (Tex. App.—El Paso 2012, no pet.) (involving motion to dismiss based on forum non conveniens). Accordingly, the appellant must challenge each independent ground asserted by the appellee. *RSL Funding*, 499 S.W.3d at 434; *McAllen Hosps.*, 2016 WL 3365788, at *2; *Elamex*, 367 S.W.3d at 888. The same is true when a trial court issues an adverse ruling on all grounds presented. See *Lodhi v. Haque*, No. 04-18-00917-CV, 2019 WL 5765787, at *8 (Tex. App.—San Antonio Nov. 6, 2019, no pet. h.) (mem. op.) (“If an appellant fails to challenge all possible grounds supporting the judgment or legal conclusion under attack, we must accept the validity of the unchallenged independent grounds and affirm the adverse ruling.”); *Estate of Purgason v. Good*, No. 14-14-00334-CV, 2016 WL 552149, at *2 (Tex. App.—Houston [14th Dist.] Feb. 11, 2016, pet. denied) (mem. op.) (“Where there is an unchallenged, alternate basis for the appealed order, any error in the challenged basis for the order is rendered harmless.”). Thus, any error in the grounds challenged on appeal is harmless because the unchallenged independent grounds support the adverse ruling. *McAllen Hosps.*, 2016 WL 3365788, at *2; *Elamex*, 367 S.W.3d at 888.

In his appellate brief, Vo challenges the trial court’s dismissal on the basis that Stanton is qualified as an expert and his report is not deficient as to his opinion

on causation. Vo failed to address the adequacy of the report as to Stanton’s opinions on the applicable standard of care and breach of that standard. The trial court did not issue findings of fact or conclusions of law but stated in its order that Iyer and Greater Houston Psychiatric Associates’ objections were sustained “in all things.” Accordingly, Vo was required to challenge each independent ground asserted by Iyer and Greater Houston Psychiatric Associates. Because he failed to do so, we must accept the validity of the unchallenged independent grounds for dismissal and affirm the trial court’s dismissal.² *See McAllen Hosps.*, 2016 WL 3365788, at *3. We overrule appellant’s issues.

We affirm the judgment of the trial court.

/s/ Frances Bourliot
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Bourliot.

² Vo contends that the trial court should have granted a continuance to allow Vo “to make, amend, or supplement” the report. But the trial court already had given Vo an opportunity to amend the report, and he was not entitled to another. *See* Tex. Civ. Prac. & Rem. Code § 74.351(c) (allowing trial court to “grant one 30-day extension” to cure deficient expert report).