Supreme Court of Texas

No. 24-1069

Soren Aldaco,

Petitioner,

v.

Barbara Rose Wood and
Three Oaks Counseling Group, LLC d/b/a Thriveworks,

Respondents

On Petition for Review from the
Court of Appeals for the Second District of Texas

Argued February 11, 2026

JUSTICE SULLIVAN delivered the unanimous opinion of the Court with respect to Parts I, II.A, and III, and a plurality opinion with respect to Part II.B, in which Justice Lehrmann, Justice Devine, and Justice Busby joined.

JUSTICE YOUNG filed a concurring opinion, in which Justice Bland joined.

Soren Aldaco sued the therapist who enabled her elective double mastectomy. The court of appeals deemed her claims time-barred by the statute of limitations in the Texas Medical Liability Act. We reverse.

I

After struggling with her gender identity throughout her teenage years, Aldaco contacted the Crane Clinic to schedule a double mastectomy. Clinic staff advised that, to move forward, she'd need a letter from a practitioner recommending her for the surgery. They provided a template for the letter, plus a list of practitioners who would sign it upon request.

Aldaco had someone else in mind. She requested the necessary letter from Barbara Rose Wood, a therapist with whom she'd been having telehealth sessions to talk about relationship issues. On February 22, 2021, Wood signed the letter "endors[ing] . . . top surgery" for Aldaco. After Aldaco missed a subsequent therapy session, failed to pay the no-show fee, and discontinued contact, Wood terminated Aldaco's psychotherapy on May 14, 2021.

On June 11, 2021, Aldaco underwent a double mastectomy at the Crane Clinic on the strength of Wood's letter. But the surgery Aldaco had hoped would solve her problems only made them worse. She experienced post-surgical complications that required emergency medical care. Research and self-reflection ultimately led her to regret the life-changing and body-altering procedure she'd once embraced.

In 2023, Aldaco sued the providers who made her double mastectomy possible, including Wood and her employer, Thriveworks. She claimed that Wood committed negligence and fraud during her therapy, and that Thriveworks was directly and vicariously liable. According to Aldaco, Wood's decision to sign the letter was "a severe departure from any recognized standard of care." She alleged that,

among other falsehoods, the letter misrepresented the extent to which Wood had treated Aldaco for gender dysphoria.

Wood and Thriveworks sought summary judgment under the TMLA's two-year statute of limitations. *See* Tex. Civ. Prac. & Rem. Code § 74.251(a). The district court granted their motion and severed Aldaco's claims against them, thereby "making final the judgment against [Wood and Thriveworks]." *Guar. Cnty. Mut. Ins. v. Reyna*, 709 S.W.2d 647, 648 n.1 (Tex. 1986) (per curiam); *see also* Tex. R. Civ. P. 41 ("Any claim against a party may be severed and proceeded with separately."). Aldaco appealed that final judgment, but the court of appeals affirmed. 727 S.W.3d 213, 218–20, 222 (Tex. App.—Fort Worth 2024). We granted Aldaco's petition for review.

II

"The enactment of statutes of limitations is, of course, the prerogative of the Legislature." *S.V. v. R.V.*, 933 S.W.2d 1, 3 (Tex. 1996). So let's "begin, as always, with the text of the statute." *City of San Antonio v. Realme*, 731 S.W.3d 342, 349 (Tex. 2026). In holding Aldaco's claims time-barred, the opinion below relied on the TMLA provision codified at Section 74.251 of the Civil Practice and Remedies Code:

> (a) 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; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim.

> Except as herein provided this section applies to all persons regardless of minority or other legal disability.
>
> (b) A claimant must bring a health care liability claim not later than 10 years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within 10 years or they are time barred.

Tex. Civ. Prac. & Rem. Code § 74.251(a)–(b).[1]

To assess Aldaco's compliance with Section 74.251(a)'s limitations period, we start with May 9, 2023, the date she gave pre-suit notice of her claims, and flip the calendar two years back. *See* Tex. Civ. Prac. & Rem. Code § 74.051(c) ("Notice given as provided in this chapter shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice . . . ."); 727 S.W.3d at 217 & n.4 (assuming the date of Aldaco's pre-suit notice for purposes of this appeal). Aldaco's claims are therefore timely if her two-year limitations period started to run after May 9, 2021.

Aldaco argues that two potential start dates meet that requirement: either May 14, 2021, the date on which Wood terminated her psychotherapy, or June 11, 2021, the date of the surgery. The court of appeals rejected Aldaco's arguments and held that the clock began ticking on February 22, 2021, when Wood "penned and provided the allegedly tortious recommendation letter" without which the double mastectomy couldn't have occurred. 727 S.W.3d at 219. We disagree.

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[1] *See generally* Jonathan D. Nowlin, Comment, *Scalpel, Please: Why the Definition of "Health Care Liability Claim" in Chapter 74 of the Civil Practice and Remedies Code Is Not as Clean-Cut as It Could Be*, 43 Tex. Tech L. Rev. 1247, 1250–57 (2011) (chronicling Section 74.251's enactment in 2003 as part of House Bill 4's comprehensive tort-reform package).

A

The statute of limitations uses a disjunctive "or" in listing potential triggering events for the two-year limitations period:

> [N]o 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 . . . .

Tex. Civ. Prac. & Rem. Code § 74.251(a) (emphasis added). "Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012); *see also Davis v. Morath*, 624 S.W.3d 215, 225 (Tex. 2021); *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 581 (Tex. 2000). That means Aldaco's claims should be deemed timely if they were filed within two years of either of the alternative triggering events joined by the word "or."

One of those triggering events is "complet[ion]" of treatment. Tex. Civ. Prac. & Rem. Code § 74.251(a). The psychotherapy that Wood provided to Aldaco, which produced the letter giving rise to claims of negligence and fraud, is the relevant "health care treatment" in this case. *Id.*; *see also id.* § 74.001 (defining "Health care"). This treatment was "completed" on May 14, 2021, when Wood terminated Aldaco's psychotherapy after she failed to pay a no-show fee. *Id.* § 74.251(a). Because Aldaco gave pre-suit notice to Wood on May 9, 2023, which is within two years of the completion of treatment, her claims were timely.

The opinion below held otherwise because "the core of Aldaco's allegations traces back to a single ascertainable event: Wood's

preparation and provision of the February 22, 2021 recommendation letter." 727 S.W.3d at 220. In so holding, the court of appeals cited *Shah v. Moss*, 67 S.W.3d 836 (Tex. 2001), and related opinions from this Court. 727 S.W.3d at 219–20 (citing *Shah*, 67 S.W.3d at 841; *Husain v. Khatib*, 964 S.W.2d 918, 919 (Tex. 1998) (per curiam); *Bala v. Maxwell*, 909 S.W.2d 889, 892–93 (Tex. 1995) (per curiam)).

Shah held that the statute's disjunctive "or" doesn't necessarily give the plaintiff a choice of dates on which to start the two-year limitations period:

> [Section 74.251(a)'s predecessor] measures the limitations period for medical negligence claims from one of three dates: (1) the occurrence of the breach or tort, (2) the last date of the relevant course of treatment, or (3) the last date of the relevant hospitalization. A plaintiff may not choose the most favorable date that falls within [the statute's] three categories. Rather, if the date the alleged tort occurred is ascertainable, limitations must begin on that date. And if the date is ascertainable, further inquiry into the second and third categories is unnecessary.

67 S.W.3d at 841 (citations omitted). In doing so, we adhered to prior opinions that emphasized the purpose of the statute:

> The purpose of the provisions for measuring limitations from the last date of treatment or hospitalization is to aid a plaintiff who was injured during a period of hospitalization or a course of medical treatment but has difficulty ascertaining the precise date of the injury. In such a situation, the statute resolves doubts about the time of accrual in the plaintiff's favor by using the last date of treatment or hospitalization as a proxy for the actual date of the tort. But if the date of the negligence can be ascertained, then there are no doubts to resolve and limitations must be measured from the date of the tort.

Husain, 964 S.W.2d at 919 (citations omitted); *see also Kimball v. Brothers*, 741 S.W.2d 370, 372 (Tex. 1987) ("The three-date scheme . . . was intended to aid the plaintiff who had difficulty ascertaining a precise date on which his injury occurred, specifically in circumstances where the claim arose from a course of treatment or a period of hospitalization that extended for a period of time.").

We needn't reconsider *Shah*, *Husain*, and *Kimball* today because those cases are distinguishable. Unlike Aldaco, the plaintiffs in those cases all suffered bodily injury on some ascertainable date before completion of their treatment or hospitalization. The plaintiff in *Kimball* had no "difficulty ascertaining a precise date on which his injury occurred" because the anesthesiologist whose failed intubation caused his respiratory failure had treated him only on the fifth day of his eleven-day hospitalization. 741 S.W.2d at 372. So too for the plaintiffs in *Husain* and *Bala*, whose doctors misdiagnosed cancer during examinations on specific days before the diseases were eventually spotted. *Husain*, 964 S.W.2d at 919–20; *Bala*, 909 S.W.2d at 891–92. And the same goes for the plaintiff in *Shah*, whose surgeon caused a detached retina by removing a scleral buckle from his eyeball on a known date and then continued to provide follow-up treatment. 67 S.W.3d at 842–43.

By contrast, Aldaco couldn't ascertain any bodily injury until after completion of her treatment. Wood terminated psychotherapy on May 14, 2021, but the double mastectomy wasn't performed until June 11, 2021. At any time during the course of treatment, Wood could've (and perhaps should've) withdrawn her allegedly negligent and

fraudulent letter of February 22, 2021. As the court of appeals acknowledged, Aldaco "characterize[s] her claims as being rooted in Wood's course of treatment[,] emphasizing that Wood had an ongoing obligation to withdraw the recommendation letter and that her counseling was flawed overall." 727 S.W.3d at 219–20. Aldaco thus claims at least 82 days of continuing negligence, from February 22 through May 14, 2021. Wood's alleged negligence posed the same risk on the last day of treatment as it did on the day she wrote the letter—namely, that Aldaco would act on the surgery recommendation that was never withdrawn. Under that theory of the case, even if we ignore Section 74.251(a)'s disjunctive "or" and give priority to the ascertainable date of the alleged negligence under the precedents quoted above, we're left with a range of dates extending at least to May 14, 2021. Within that timeframe, there's no ascertainable date of injury on which Aldaco's limitations period began to run under *Shah* and its ilk. By giving pre-suit notice within two years of Wood's completion of treatment, therefore, Aldaco satisfied the statute of limitations.

B

Aldaco's claims would be timely even if we ignored everything after the disjunctive "or" that the Legislature wrote into the statute of limitations. The court of appeals held that her receipt of Wood's letter on February 22, 2021 constituted "the occurrence of the . . . tort" for purposes of Section 74.251(a). *See* 727 S.W.3d at 219. This was a misreading of the statute.

"Statutory interpretation relies on the context and framework of an entire statute, not just on the definitions of words in isolation." *In re*

Oncor Elec. Delivery Co., 630 S.W.3d 40, 46 (Tex. 2021). So it'd be a mistake to construe the statute of limitations in Section 74.251(a) without accounting for the nearby statute of repose in Section 74.251(b). After all, "the surrounding provisions of a disputed text" are "[a]mong the core contextual considerations that generate reliable constructions." *Brown v. City of Houston*, 660 S.W.3d 749, 754 (Tex. 2023).

The Legislature used different words to prescribe different triggering events in adjoining subsections of the TMLA provision at hand. The two-year statute of limitations runs "from the occurrence of the breach or tort." Tex. Civ. Prac. & Rem. Code § 74.251(a). The ten-year statute of repose, by contrast, runs from "the date of the act or omission that gives rise to the claim." *Id.* § 74.251(b).

Wood's signing of the letter on February 22, 2021 is "the act . . . that gives rise to the claim[s]" within the meaning of Section 74.251(b). She herself never wielded a scalpel to remove healthy tissue from Aldaco's body. Instead, Wood signed a letter "endors[ing] . . . top surgery" that prompted the Crane Clinic to perform the double mastectomy. This act gave rise to Aldaco's claims of negligence and fraud against Wood, so the ten-year statute of repose would've foreclosed those claims had Aldaco waited until after February 22, 2031 to sue.

Section 74.251(a)'s two-year statute of limitations, however, runs from "the occurrence of the . . . tort" rather than "the act . . . that gives rise to the claim." *Compare* Tex. Civ. Prac. & Rem. Code § 74.251(a), *with id.* § 74.251(b). This material variation in terms matters, because "we generally presume the Legislature uses the same word consistently throughout a statute and uses different words to convey different

meanings." *Malouf v. State ex rel. Ellis*, 694 S.W.3d 712, 727 (Tex. 2024); *see also DeWitt v. Harris County*, 904 S.W.2d 650, 653 (Tex. 1995); *Love v. City of Dallas*, 40 S.W.2d 20, 23–24 (Tex. 1931); Scalia & Garner, *supra*, at 170. Statutory context thus demands that we distinguish the "tort" from the underlying "act."

According to Aldaco, Wood's act of providing the letter gave rise to claims of negligence and fraud. Each of these torts entails some injury to the plaintiff. *See, e.g.*, *City of Gladewater v. Pike*, 727 S.W.2d 514, 517 (Tex. 1987) ("Negligence requires the presence of three basic elements: duty on the part of one person to another; breach of that legal duty; and injury to the person to whom the duty is owed as a proximate result of the breach."); *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 688 (Tex. 1990) ("The elements of fraud are a material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of the truth, which was intended to be acted upon, which was relied upon, and which caused injury."). Aldaco suffered no injury until June 11, 2021, when the Crane Clinic performed the double mastectomy in reliance upon Wood's letter.

Had Aldaco sued after receiving Wood's letter but before undergoing the surgery, her claims of negligence and fraud would've failed as a matter of law because a tort had not yet occurred. "[A] plaintiff asserting a health care liability claim based on negligence, who cannot prove that her injury was proximately caused by the defendant's failure to meet applicable standards of care, does not have a meritorious claim." *Columbia Valley Healthcare Sys., L.P. v. Zamarripa*, 526 S.W.3d 453, 460 (Tex. 2017). And a plaintiff who "was not actually defrauded"

because she didn't rely on an alleged misstatement will be doomed by the fact that "Texas common-law fraud require[s] actual injury." *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 707 (Tex. 2001).

For purposes of Section 74.251(a), therefore, the injurious surgery on June 11, 2021 marked "the occurrence of the . . . tort" and triggered the two-year statute of limitations. Aldaco gave pre-suit notice on May 9, 2023, over a month before the deadline of June 11, 2023, so her claims were timely for this independent reason.

In holding to the contrary, the court of appeals pointed to the statutory history of what's now codified at Section 74.251(a). *See* 727 S.W.3d at 218–20. Prior to 1975, a personal-injury action had to "be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward." Tex. Rev. Civ. Stat. art. 5526 (A.C. Baldwin & Sons 1925) (repealed 1985). But in that year, and again in 1977, the Legislature omitted the word "accrued" when it enacted and then replaced a healthcare-specific statute of limitations. *See* Act of May 29, 1975, 64th Leg., R.S., ch. 330, § 1, 1975 Tex. Gen. Laws 864, 865; Act of May 31, 1977, 65th Leg., R.S., ch. 817, § 10.01, 1977 Tex. Gen. Laws 2039, 2052. According to the court of appeals, this cut means that Aldaco can't invoke "the general rule that a claim accrues when a defendant's wrongful conduct causes a legal injury." 727 S.W.3d at 219 (citing *Regency Field Servs., LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 814–15 & n.16 (Tex. 2021)).

This reasoning fails to account for the statutory text that's currently on the books. The statute of limitations that was enacted in 1977, which is the predecessor to Section 74.251(a), wasn't paired with

a statute of repose. *See* Act of May 30, 1977, 65th Leg., R.S., ch. 817, § 10.01, 1977 Tex. Gen. Laws 2039, 2052. It was only in 2003 that the Legislature added the statute of repose in Section 74.251(b), with its differently worded trigger. *See Walters v. Cleveland Reg'l Med. Ctr.*, 307 S.W.3d 292, 298 (Tex. 2010). As explained above, this contextual clue should inform any sound reading of Section 74.251(a), given the "presum[ption] that the [L]egislature intended different meanings by using different words." *Brown*, 660 S.W.3d at 756. Yet the opinion below never mentions the text of Section 74.251(b).

Relatedly, the court of appeals read too much into our opinions interpreting Section 74.251(a)'s predecessors. In 1967, we held that "[c]auses of action based upon the alleged negligence of a physician in leaving a foreign object in his patient's body are proper subjects for the 'discovery rule,'" such that a claim "accrues when the patient learns of, or, in the exercise of reasonable care and diligence, should have learned of the presence of such foreign object in his body." *Gaddis v. Smith*, 417 S.W.2d 577, 580 (Tex. 1967). That was back when the statute of limitations included the word "accrued." After the Legislature omitted that word from the healthcare-specific statutes of limitations in 1975 and 1977, we held that this cut "abolish[ed] the discovery rule." *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985); *accord Diaz v. Westphal*, 941 S.W.2d 96, 99–100 (Tex. 1997); *State v. Thirteenth Ct. of Appeals*, 933 S.W.2d 43, 45 (Tex. 1996) (per curiam); *Jennings v. Burgess*, 917 S.W.2d 790, 793 (Tex. 1996); *Nelson v. Krusen*, 678 S.W.2d

918, 920 (Tex. 1984).[2] The court of appeals relied on this omission in holding Aldaco's claims time-barred. *See* 727 S.W.3d at 219 (observing that "the Legislature unambiguously exercised its prerogative to excise any reference to accrual," and citing *Morrison*, 699 S.W.2d at 208).

But Aldaco isn't relying on "the court-fashioned discovery rule" that the Legislature "abrogated" in 1975. *Walters*, 307 S.W.3d at 298 n.28. The discovery rule presupposes a plaintiff who suffered some hidden injury. *See, e.g.*, *Hays v. Hall*, 488 S.W.2d 412, 413–14 (Tex. 1972) (applying the discovery rule for the benefit of a patient whose vasectomy didn't render him sterile); *Gaddis*, 417 S.W.2d at 578–81 (applying the discovery rule for the benefit of a patient whose C-section ended with a sponge sewed up inside her); *Weaver v. Witt*, 561 S.W.2d 792, 793–94 (Tex. 1977) (per curiam) (applying the discovery rule for the benefit of a patient whose hemorrhoidectomy severed the nerves and

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[2] In *Morrison*, we concluded that "the Legislature did not intend the term 'tort' to refer to the time a cause of action accrues" because "[e]very word excluded from a statute must be presumed to have been excluded for a reason." 699 S.W.2d at 208. At that time, there was no neighboring statute of repose whose reference to "the act or omission that gives rise to the claim" could inform the meaning of the word "tort" in the statute of limitations. The Legislature didn't add that differently worded trigger until 2003. Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 10.01, 2003 Tex. Gen. Laws 847, 872. While *Morrison*'s holding as to the abolition of the discovery rule remains good law, our reading of "tort" in Section 74.251(a) must be informed by that "word's immediate syntactic setting—that is, the words that surround[ed] it in a specific utterance," circa 2003. Scalia & Garner, *supra*, at 33. This isn't to say that "the 2003 legislature's use of different language . . . retroactively change[d] the meaning of a much earlier legislature's use of 'tort.' " *Post* at 7 (Young, J., concurring). We had no occasion in *Morrison* to hold that there can be a "tort" without an injury, because the plaintiff in that case had received radium treatments that injured her by burning a hole in her bladder. *See* 699 S.W.2d at 206, 208.

muscles in his rectum, causing eventual loss of bowel control). "[W]hen the discovery rule applies, the claims accrue not when the wrongful conduct first causes a legal injury"—that is, when a tort has occurred—"but when the claimant first knew or in the exercise of reasonable diligence should have known of the wrongful act and resulting injury." *Regency*, 622 S.W.3d at 817 (internal quotation marks omitted).

Unlike plaintiffs who benefited from the discovery rule, there was no bodily injury Aldaco could've discovered until her double mastectomy was performed on June 11, 2021. Her two-year limitations period could start running on that date—not because she could've discovered her injury, but because that's when the "tort" she alleges first "occurr[ed]." Tex. Civ. Prac. & Rem. Code § 74.251(a).

III

Aldaco's claims against Wood are not time-barred under Section 74.251(a). Accordingly, we reverse the judgment of the court of appeals and remand to the district court for further proceedings.

James P. Sullivan
Justice

OPINION DELIVERED: June 26, 2026