

Texas Appellate Court Holds that Legal Malpractice Plaintiffs Must Undergo Independent Medical Examinations as Part of Their “Case-Within-a-Case.”

Kelli Hinson
Carrington, Coleman, Sloman & Blumenthal, LLP
Dallas, Texas
khinson@ccsb.com

In re: Medina, 2007 WL 4279171 (Tex. App. – Houston [1st Dist.] Dec. 6, 2007, no pet. h.), illustrates some of the difficulties involved in proving up the “case-within-a-case” that is an essential element to most litigation/settlement malpractice actions.

This malpractice case was brought by several workers – the “Medina Plaintiffs” – who suffered personal injuries in the 2005 British Petroleum (“BP”) Texas City Refinery explosion. After the Medina Plaintiffs settled their personal injury claims against BP, they filed suit against their attorney for legal malpractice, alleging among other things that they should have received more money to settle their personal injury claims. Plaintiffs also alleged that their lawyer failed to fully investigate and assess individual claims and improperly interjected himself in plaintiffs’ medical treatment. In the malpractice case, the defendant lawyer sought and obtained an order to obtain independent medical and psychological examinations (“IMEs”) from all 55 of the Medina Plaintiffs. The Medina Plaintiffs filed a petition for writ of mandamus seeking to vacate that order and prevent the IMEs from going forward.

The Medina Plaintiffs argued that the IMEs were inappropriate. The defendant lawyer, however, argued that a legal malpractice action is actually a “suit within a suit” and that the IMEs should be permitted so that he can determine the legitimacy of the plaintiffs’ underlying personal injury claims and, thus, their malpractice claims. Texas Rule of Civil Procedure 204.1 allows the court to order an independent medical examination for “good cause shown” if the mental or physical condition of a party is in controversy.ⁱ Good cause is shown when (1) the examination is relevant to issues in the case and the examination will produce, or is likely to lead to, relevant evidence; (2) there is a reasonable nexus between the condition of the person to be examined and the examination sought; and (3) it is impossible to obtain the desired information through means that are less intrusive than a compelled examination.ⁱⁱ The “in controversy” requirement is more rigorously applied when mental examinations, as opposed to physical examinations, are sought due to the sensitive nature of mental health examinations. Physical injuries are “in controversy” when a party places the condition into controversy by employing it either in support of, or in defense of, a claim or affirmatively shows that the condition is in controversy.ⁱⁱⁱ To obtain an IME regarding mental health, however, the plaintiff must “claim a mental injury exceeding the common emotional reaction to an injury or loss.” In other words, “routine allegations of mental

anguish or emotional distress accompanying physical injury do not place mental condition ‘in controversy.’”^{iv}

In the mandamus proceeding, the court held that the Medina Plaintiffs had put their physical condition “in controversy” in the legal malpractice case because of the need to prove the merits of their underlying claims, and the physical IMEs were, therefore, proper. Based on the record before the court, it could not determine which if any of the Medina Plaintiffs had asserted mental injuries sufficient to justify mental health IMEs, and so the mental exam portion of the order was inappropriate.

Practice Note

In attempting to prove (or disprove) the plaintiffs’ case-within-a-case for the purposes of a legal malpractice action, it can often be difficult to get access to the discovery that would have been available in the underlying proceeding. This case illustrates one avenue that may be pursued in cases where evidence of the plaintiffs’ mental and/or physical condition is necessary to prove the viability and value of the underlying claim.

ⁱ Tex. R. Civ. Proc. 204.1.

ⁱⁱ In re Medina, 2007 WL 4279171, at *2 (citing Coates v. Whittington, 758 S.W.2d 749, 753 (Tex. 1988)).

ⁱⁱⁱ Id.

^{iv} Id.