CONDITIONALLY GRANTED and Opinion Filed July 30, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-25-00498-CV

IN RE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND KELLY RENEE GILLEN, Relators

Original Proceeding from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-24-03769-E

OPINION

Before Justices Miskel, Kennedy, and Lee
Opinion by Justice Miskel

In this original proceeding, relators seek mandamus relief from the trial court's order excluding their expert witness from testifying as to the reasonableness of the plaintiff's medical expenses on the ground that relators never controverted the plaintiff's affidavits concerning costs and necessity of services with a counteraffidavit. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 18.001. Relying on the Texas Supreme Court's opinion in *In re Allstate Indemnity Co.*, 622 S.W.3d 870 (Tex. 2021) (orig. proceeding), relators argue that the trial court's order was an abuse of discretion for which they lack an adequate remedy by appeal. We agree and conditionally grant the writ.

I. Background

Angie Avina sued her insurer, State Farm Mutual Automobile Insurance Company, and one of its adjusters, Kelly Renee Gillen, (collectively State Farm) for underinsured-motorist benefits after she was injured in a motor-vehicle accident. Through her lawsuit, Avina seeks a declaratory judgment establishing her entitlement to underinsured-motorist benefits and the amount thereof. She also asserts claims against State Farm for alleged violations of the Texas Insurance Code regarding the handling of her underinsured-motorist claim.

Among other damages, Avina seeks recovery of her reasonable and necessary medical expenses. In support of these claimed damages, Avina timely served affidavits from her medical providers under Texas Civil Practice and Remedies Code section 18.001. These affidavits attested to the reasonableness of the charges and the necessity of the services provided. The parties do not dispute that Avina's affidavits comply with section 18.001's requirements.

Section 18.001 also allows the opposing party to controvert the claimant's affidavit with a counteraffidavit, subject to certain requirements. *See* CIV. PRAC. & REM. § 18.001(e)–(g). But State Farm never attempted to use this procedure. Instead, State Farm designated certain retained and non-retained experts to address Avina's medical treatment and expenses, including Charlotte L. Warmington. State Farm designated Warmington to testify as to the reasonableness of Avina's past and future medical expenses.

Avina moved to exclude Warmington from testifying as to the reasonableness of Avina's medical expenses. Avina argued that section 18.001 is the only mechanism available to challenge the reasonableness of her medical expenses. Because State Farm never served a section 18.001 counteraffidavit from Warmington, Avina argued that Warmington is not allowed to testify as to the reasonableness of her medical expenses.

The parties briefed the motion, and the trial court held a hearing on the motion. After considering the motion, the response, and the arguments of counsel, the trial judge signed an order[1] granting the motion.

State Farm now seeks mandamus relief from the trial judge's order. It asks that we direct the trial judge to vacate her order as an abuse of discretion for which it lacks an adequate remedy by appeal. We requested a response, received a response from Avina, and received a reply from State Farm.

II. Standard of review

To be entitled to mandamus relief, a relator generally must show that (1) the trial judge clearly abused her discretion and (2) the relator lacks an adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). A trial judge abuses her discretion when a decision is arbitrary, unreasonable, and without reference to guiding principles. *Allstate*, 622 S.W.3d at

1 The trial judge signed two identical orders granting the motion, on March 21 and 24, 2025. We refer to both orders generally as the trial judge's order.

875–76. "No specific definition captures the essence of or circumscribes what comprises an 'adequate' remedy; the term is 'a proxy for the careful balance of jurisprudential considerations,' and its meaning 'depends heavily on the circumstances presented.'" *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam) (quoting *Prudential*, 148 S.W.3d at 136–37).

III. Analysis

Under Texas law, a claimant seeking to recover past medical expenses must prove the amounts paid or incurred are reasonable and necessary. *In re Chefs' Produce of Hous., Inc.*, 667 S.W.3d 297, 301 (Tex. 2023) (orig. proceeding) (per curiam); *Allstate*, 622 S.W.3d at 876. Reasonableness and necessity can be proven by expert testimony at trial or according to section 18.001's affidavit procedure. *Chefs' Produce*, 667 S.W.3d at 301; *Allstate*, 622 S.W.3d at 876.

Section 18.001 allows the claimant to present evidence as to the reasonableness and necessity of the medical expenses paid or incurred by an uncontroverted affidavit that complies with the statute. *See* CIV. PRAC. & REM. § 18.001(b). "[S]ection 18.001 is a 'purely procedural' statute that is designed to 'streamline proof of the reasonableness and necessity of medical expenses.'" *Allstate*, 622 S.W.3d at 881 (quoting *Haygood v. De Escabedo*, 356 S.W.3d 390, 397 (Tex. 2011)). Absent a proper counteraffidavit, a proper section 18.001(b) affidavit relieves the claimant from having to adduce expert testimony on the issue of reasonableness at trial. *Id.* "[B]ut the opposing party's failure to serve a compliant

counteraffidavit has *no* impact on its ability to challenge reasonableness or necessity at trial." *Id.* Therefore, while an uncontroverted section 18.001(b) affidavit may constitute sufficient evidence of reasonableness and necessity, it is not conclusive. *Id.* The opposing party remains free to challenge reasonableness and necessity through argument or evidence, including expert testimony. *Id.*

A. Abuse of discretion

State Farm and Avina generally agree as to *Allstate*'s controlling principle: that "[t]he claimant's decision to file initial affidavits *may* relieve her of the burden to adduce expert trial testimony on reasonableness and necessity, but the opposing party's failure to serve a compliant counteraffidavit has *no* impact on its ability to challenge reasonableness or necessity at trial." *Id.* at 881. They differ over whether this principle applies only when the opposing party *attempts* to serve a compliant counteraffidavit or if it also applies when the opposing party serves *no* counteraffidavit at all. Avina raises two arguments supporting her contention that *Allstate* does not apply when the opposing party serves no counteraffidavit.

First, Avina highlights subsection (e)'s requirement that a party intending to controvert "must serve" a counteraffidavit by the applicable deadline. *See* CIV. PRAC. & REM. § 18.001(e). She argues that because State Farm never served a counteraffidavit, it cannot challenge reasonableness or necessity at trial.

To begin with, the Supreme Court has rejected the claim that section 18.001 creates an exclusionary rule. The Court in *Allstate* held that "[t]here is no textual

support for the assertion that the absence of a proper counteraffidavit constitutes a basis to constrain the defendant's ability to challenge—through evidence or argument—the claimant's assertion that her medical expenses are reasonable and necessary." 622 S.W.3d at 881. In expressly disapproving one case, for instance, the Court specifically quoted—and implicitly rejected—the assertion that "[I]f no counteraffidavit is filed, an opposing party may not introduce contrary evidence at trial." *Id.* at 881 (quoting *In re Savoy*, 607 S.W.3d 120, 130 (Tex. App.—Austin 2020, orig. proceeding)). "By creating an exclusionary sanction for the failure to satisfy section 18.001(f) that finds no basis in the statutory text, [courts following the rejected approach] have turned this 'purely procedural' statute into a death penalty on the issue of past medical expenses." *Id*. at 882. The Court in *Chefs' Produce* further explained that a defendant may challenge the medical expenses *either* through a controverting affidavit *or* through evidence at trial:

> An uncontroverted affidavit under Section 18.001(b) is sufficient evidence—but not conclusive—that medical expenses are reasonable and necessary. At trial, defendants may still challenge—through evidence and argument—a claimant's assertion that medical expenses are reasonable or necessary.
>
> Section 18.001 also provides defendants a means to controvert the claimant's affidavit.

667 S.W.3d at 301 (internal citations omitted).

Next, as to Avina's claim that section 18.001(e) requires that the controverting party "must serve" a counteraffidavit, the Court in *Allstate* explained that "[s]ection 18.001(e) identifies the party to whom its timing and procedural requirements apply:

the 'party intending to controvert' an initial affidavit." 622 S.W.3d at 882. Subsection (e) cannot be read as a threshold requirement for challenging reasonableness or necessity at trial; rather, it is a timing requirement for controverting the initial affidavit and forcing the claimant to present expert testimony at trial establishing reasonableness and necessity. *See id.* at 882–83. In other words, to neutralize the convenience of section 18.001's affidavit procedure, the opposing party "must serve" a proper counteraffidavit by subsection (e)'s applicable deadline. Subsection (e) does not mean that to challenge reasonableness or necessity at trial, the opposing party must have served by subsection (e)'s applicable deadline a counteraffidavit attempting to comply with subsection (f)'s requirements.

Second, Avina points to subsection (f)'s requirement that a counteraffidavit must give "reasonable notice of the basis on which the party serving it intends at trial to controvert the claim reflected by the initial affidavit." CIV. PRAC. & REM. § 18.001(f). Avina argues that while an imperfect counteraffidavit may sometimes provide some notice or even sufficient notice, the complete absence of a counteraffidavit provides no notice, defeating section 18.001's purpose. However, Avina's argument is logically inconsistent. Under her argument, an opposing party who serves a counteraffidavit that fails to give reasonable notice may challenge reasonableness at trial while an opposing party who serves no counteraffidavit may not because the claimant did not receive reasonable notice. Section 18.001's purpose

is to "streamline proof of reasonableness and necessity of medical expenses," not to provide reasonable notice on how the opposing party might challenge reasonableness and necessity, which could be obtained through other litigation tools. *See Allstate*, 622 S.W.3d at 881. "Nothing in the statute suggests that a party's failure to comply with section 18.001(f) demonstrates that party lacked [or waived] the intent to controvert the initial affidavit." *Id.* at 882–83.

Overall, we reject Avina's argument that an opposing party's ability to challenge reasonableness or necessity at trial turns on whether it attempted to serve a proper counteraffidavit. Although the defendants in *Allstate* and *Chef's Produce* had attempted a counteraffidavit, we conclude that these opinions did not hinge on that fact. Rather, these opinions announced principles that apply even when no counteraffidavit is filed. The Court in *Allstate* explained that section 18.001 is a "purely procedural" statute that must not be turned into "a death penalty on the issue of past medical expenses." 622 S.W.3d at 882. *Allstate* disapproved courts that had created "an exclusionary sanction . . . that finds no basis in the statutory text." *Id.* at 881–82.

Accordingly, we conclude that the trial judge abused her discretion by granting, without a valid legal basis, Avina's motion to exclude Warmington from testifying at trial as to the reasonableness of Avina's medical expenses.

B. Inadequate remedy by appeal

"An appeal is not an adequate remedy when 'the party's ability to present a viable claim or defense at trial is vitiated or severely compromised' by the trial court's error." *Id.* at 883 (quoting *Walker v. Packer*, 827 S.W.2d 833, 843 (Tex. 1992) (orig. proceeding)). In the context of section 18.001, the Supreme Court has held that if the challenged order "effectively forecloses [the defendants] from presenting expert testimony at trial to challenge the reasonableness and necessity of [the plaintiff's] medical expenses, [the defendants'] ability to present a defense has been severely compromised and they in turn lack an adequate appellate remedy." *Chefs' Produce*, 667 S.W.3d at 303; *see also Allstate*, 622 S.W.3d at 883 ("The trial court's order would preclude Allstate from engaging in meaningful adversarial adjudication of [the plaintiff's] claim for payment of medical expenses, vitiating or severely compromising Allstate's defense."). We conclude that the trial judge's order here would do just that.

IV. Conclusion

The trial judge abused her discretion by granting relief that finds no legal basis in section 18.001, and State Farm lacks an adequate remedy to address this error by appeal. As a result, we conditionally grant State Farm's petition for writ of mandamus and order the trial judge to vacate her March 21, 2025, and March 24, 2025 orders "granting plaintiff's motion to partially exclude defendant's expert Charlotte L. Warmington."

Our writ will issue only if the trial judge fails to comply.

/Emily Miskel/
EMILY MISKEL
JUSTICE