



Case Summaries December 2, 2022

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OPINIONS

PROCEDURE-PRETRIAL

Discovery

In re Auburn Creek L.P., ___ S.W.3d ___, 2022 WL ___ (Tex. Dec. 2, 2022) (per curiam) [21-0886]

The issue in this mandamus proceeding is whether the trial court abused its discretion by denying the defendants' motion under Texas Rule of Civil Procedure 204.1 to conduct a medical examination of the plaintiffs.

Members of the Pau family sued their landlord Auburn Creek and related parties, alleging that they sustained traumatic brain injuries from being exposed to carbon monoxide in their apartment. The Paus seek more than \$33 million in damages. Auburn Creek moved for an order under Rule 204.1 requiring the Paus to submit to neuropsychological testing by a clinical psychologist that Auburn Creek had retained as a testifying expert. After the trial court denied the motion without prejudice, Auburn Creek filed a motion to reconsider, which the trial court also denied. Both motions were filed more than 30 days before the end of the discovery period, as required by Rule 204.1. On the Paus' motion, and because Auburn Creek acknowledged that its expert could not form an opinion on the nature and extent of the Paus' injuries without examining the plaintiffs himself, the trial court issued an order striking the expert's testimony in part. The court of appeals denied Auburn Creek's mandamus petition.

The Supreme Court conditionally granted mandamus relief in a per curiam opinion. The Court first held that Auburn Creek's motions were timely. The Paus argued that the motion to reconsider was filed too late because the hearing was not held until a few days before the end of the discovery period, and it would not have been possible to conduct the examination before discovery closed. The Court disagreed because Auburn Creek's motions were timely under Rule 204.1, and the delay in having the motion to reconsider heard was outside of Auburn Creek's control.

Next, the Court held that Auburn Creek's motion satisfies Rule 204.1's good-cause requirement because Auburn Creek's motion meets the three-part test established by Supreme Court precedent: (1) the examination is likely to lead to relevant evidence; (2) there is a nexus between the examination and the condition alleged; and (3) the information cannot be obtained by less intrusive means. After concluding that Auburn Creek lacks an adequate remedy by appeal, the Court directed the trial court to withdraw its orders denying the motion to compel and partially

striking Auburn Creek's expert and to sign an order requiring the Paus to submit to an examination by Auburn Creek's expert.