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

JUSTICE YOUNG, with whom Justice Bland joins, concurring.

Aldaco's claim was timely filed. I join Part II.A of the Court's opinion, which describes the pathway for reaching this result. The basis for the judgment is narrow, and today's decision should not have significant consequences beyond cases like this one. But the narrowness of our decision may also illustrate why this case's underlying issues cry out more for legislative than judicial solutions. Unlike this Court, the legislature has authority to draw lines based on its views of policy.

I write separately to further describe why Part II.A (which is the opinion of the Court) reaches the correct judgment, why I am much more

doubtful about the views expressed in Part II.B (which is not part of the opinion of the Court), and why any changes to the statute should come from the legislative rather than the judicial process.

I

Part II.A of the Court's opinion holds that Aldaco's claim was timely filed because her timeliness is properly measured not by the date of the eventual surgery but based on when her counselor–patient relationship with Wood ended. I agree with this holding.

Our limitations cases that focused on a specific date rather than the completion of a course of treatment did so because a particular act or omission was itself the sole moment of negligence. The nature of the alleged harm in this case is different. It is quite unlike, for example, an alleged failure to diagnose cancer, *see Husain v. Khatib*, 964 S.W.2d 918, 919 (Tex. 1998), or an improperly conducted eye surgery, *see Shah v. Moss*, 67 S.W.3d 836, 839 (Tex. 2001). Assessing whether a particular pathogen or disease is present, or conducting an operation on a patient, is a transaction with an obvious beginning and end. It is possible to determine objectively and precisely when the alleged negligence occurred. By contrast, gender-dysphoria counseling inherently requires a course of treatment. It involves helping a patient work through delicate and transcendent issues about self-identity, and no single moment is dispositive. The relationship itself, and not some particular service like an operation or an exam, is what constitutes the treatment.

This Court has long stated that the dichotomy in Civil Practice and Remedies Code § 74.251(a) and its predecessor statutes aims "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." *Husain*, 964 S.W.2d at 919 (citing *Kimball v. Brothers*, 741 S.W.2d 370, 372 (Tex. 1987)). *Kimball*, in turn, recognized that we had embraced that understanding in *Morrison v. Chan*, 699 S.W.2d 205 (Tex. 1985), which affirmed the court of appeals' even clearer decision, *see* 668 S.W.2d 483, 485 (Tex. App.—Fort Worth 1984), and that even earlier cases had done so. The Court acknowledges all of this. *Ante* at 6–7.

For that reason, I doubt that the Court really needs to "distinguish" this case from our precedents rather than to simply apply them. I suppose the Court is right that, if a distinction is needed at all, it exists in that the discrete "bodily injury" in those cases was the injury sued upon and the result of acts or omissions at an ascertainable point in time. *Id.* at 7. But that only illustrates my point: the entirety of Wood's relationship with Aldaco, not just the single "bodily injury" that took place later, constituted Aldaco's treatment. Every day of a counseling relationship in which the counselor provided not merely negligent or inadequate treatment but affirmatively damaging treatment—which is what Aldaco alleges about Wood's inflammation rather than alleviation of Aldaco's gender dysphoria, as the Court recognizes, *see id.* at 7–8—was harmful.

I draw two conclusions from all this. First, the surgery itself was *not* the critical moment for limitations purposes, and Aldaco could have asserted a claim against Wood regardless of whether the surgery happened or not (although perhaps resulting in far fewer potential damages had the surgery not occurred). Second, the end of the counselor–patient relationship *was* the critical moment because, until that relationship ended, Wood had a duty to competently steer Aldaco in a healthy direction and to help her

manage the various aspects of her gender dysphoria. This duty would include refusing to recommend harmful surgery and rescinding any such recommendation that had been made. The termination point thus became the proper moment under § 74.251(a) for limitations to begin running. To be clear, the fact that treatment remains ongoing does not expand the two-year window; it just tells us when the window closes for limitations purposes. A longstanding and continuing counselor–patient relationship means that the patient would have two years from the relationship's end to seek a remedy for injuries caused during that two-year period, but it does not mean that a patient could demand damages for far earlier conduct in the relationship. No such scenario is contemplated here, where both the counselor–patient relationship's termination *and* the surgery fell within two years of Aldaco's suit.

The court of appeals' error, therefore, was to focus on what it called "the core of Aldaco's allegations," 727 S.W.3d 213, 220 (Tex. App.—Fort Worth 2024), which confused one manifestation of the injury with its full scope. This case falls squarely within the limitations statute's completion-of-treatment prong. That court should have held, as this Court does now, that Aldaco filed in time.

Accordingly, this case fits within our existing jurisprudential framework. It is surely a rare example; I doubt that there are too many contexts in which a limitations analysis would compel a focus on the relationship itself. But our precedents, it seems to me, recognize the statute's anticipation of cases in which no single point in time is the sole source of the injury, which is why the statute includes the completion of treatment as a possible date.

The Court adopts the completion-of-treatment rationale, but it expresses at least some ambivalence about our precedents, including "*Shah* and its ilk." *Ante* at 8. I do not find those cases to be in tension with our resolution of this case. As I read them, they *support* the completion-of-treatment rationale.

Part of why the Court appears uncomfortable with those precedents is that some of them, as the Court puts it, "emphasized the purpose of the statute." *Id.* at 6. I readily agree that statutory interpretation goes awry when courts distort textual meaning to accommodate perceived legislative purposes. But while our precedents sometimes use the word "purpose" to describe what the legislature enacted, it does not necessarily follow that an understanding of purpose overrode the Court's best statutory reading.

Even assuming that those cases' interpretations were botched as a textual matter, though, they still represent decades of settled precedent. *See Mitschke v. Borromeo*, 645 S.W.3d 251, 260 (Tex. 2022) ("[T]he doctrine [of *stare decisis*] exists to protect wrongly decided cases."); *id.* at 265 ("[W]e have long held that in the area of statutory construction, the doctrine of *stare decisis* has its greatest force." (quotation marks omitted)). Our interpretation of the textual inclusion of both the "tort" and the end of a course of treatment (or hospitalization), *see* Tex. Civ. Prac. & Rem. Code § 74.251(a), has remained consistent for over forty years, spanning many legislative sessions and many revisions of the statute. So even if we were initially wrong, both *stare decisis* and legislative acquiescence would still caution against changing course now. I am not an absolutist on legislative acquiescence or *stare decisis*—even statutory *stare decisis*—but it seems to me that at this point, the judiciary should leave changes to the legislature.

Happily, we can faithfully resolve today's case without impinging either on the text of the statute or on our settled precedent interpreting it. In my view, today's case results in no significant modification to the law and should have no significant consequences in cases unlike this one. Of course, if Aldaco had filed her original petition even a week later, it would have been untimely under current law. If that is problematic in this context, the legislature could adopt a different rule, as I describe a bit more below. The courts, however, lack that authority and must follow the law regardless of where it leads, like it or not.

II

I am more troubled with the rationale described in Part II.B, which is not part of the opinion of the Court. If adopted by the Court, however, Part II.B really would constitute a substantial and unjustified departure from our precedent. The dissenting justices in *Shah* made an argument similar to Part II.B's reasoning here: "Even more troubling is the anomalous result that the Court's reasoning produces—*limitations began to run on [Plaintiff]'s claim before he suffered an injury*." 67 S.W.3d at 848 (O'Neill, J., dissenting). The premise of Part II.B is that the letter cannot be a "tort" until injury occurs. As I described above, I think that in this narrow context, Aldaco suffered an injury aside from the letter or the surgery. But if we accept Part II.B's premise, it would mean that a surgery any time up to 10 years after the letter would allow for the same lawsuit, which strikes me as injecting uncertainty into medical liability in areas far beyond this context.

The plurality makes much of the 2003 enactment of the statute of repose. But a later-enacted statute by one legislature does not change the *meaning* of unchanged text adopted by an earlier legislature—here, the

simple word "tort." *See, e.g.*, *United States v. Est. of Romani*, 523 U.S. 517, 536 (1998) (Scalia, J., concurring in part and in the judgment) ("The Constitution puts Congress in the business of writing new laws, not interpreting old ones. '[L]ater enacted laws . . . do not declare the meaning of earlier law.'" (quoting *Almendarez–Torres v. United States*, 523 U.S. 224, 237 (1998))); *Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1, 13 (Tex. 1998) ("[I]t is well settled that 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" (quoting *Russello v. United States*, 464 U.S. 16, 26 (1983))); *Rowan Oil Co. v. Tex. Emp. Comm'n*, 263 S.W.2d 140, 144 (Tex. 1953) ("[N]either does one session of the Legislature have the power to construe the Acts or declare the intent of a past session."). A new statute can change the law, of course, but not in the way the plurality suggests. So while I agree that the legislature generally (rebuttably) uses different words for different meanings, the 2003 legislature's use of different language cannot retroactively change the meaning of a much earlier legislature's use of "tort." I therefore disagree with the plurality that the statute's settled meaning has changed because of new language in a different provision. *See ante* at 12 n.2.

Even if all the current statutory language had been adopted all at once on a blank sheet, I doubt that any language in the statute of repose would be rendered meaningless unless we adopt the view the plurality suggests. Fortunately, we need not resolve that question today. But the legislature may well find it worthwhile to reexamine the point and provide greater clarity in light of the apparent disagreement on the Court. If the plurality is correct, it would be easy enough for the legislature to greatly

expand limitations for claims against the medical profession. If I am correct, it would be easy enough for the legislature to confirm that, too. And if it does nothing either way, we can await a case in which it is dispositive—and the legislature could respond to that eventual decision, too.

III

The rationale that the Court adopts in Part II.A is both sound and very limited. Today's holding should be minimally disruptive to the law governing medical liability because, beyond this circumstance, it should have few applications (possibly, for example, a handful of others in which medical treatment implicates a relationship like that of the counselor to the patient seeking mental-health guidance).

On the other hand, it is also limited even in *this* circumstance because it turns on when a counselor–patient relationship ends. To the extent that the legislature concludes that claims like the one at issue here warrant different or longer limitations periods, any such differences should come from the policymaking branches, not the courts. The work of the other branches includes enacting law and policy that in their view reflect the priorities and values that best serve the interests of our State.

"The legislature is well within its rights to impose heightened standards on [health care liability claims] and to prescribe the consequences that follow when those standards are not met." *Collin Creek Assisted Living Ctr. v. Faber*, 671 S.W.3d 879, 895 (Tex. 2023) (Young, J., concurring). The Texas Medical Liability Act—Chapter 74 of the Civil Practice and Remedies Code—contains a host of important and complex requirements that implement the legislature's judgment about when and how such claims may be brought. They are policy choices. By when should someone sue?

How diligent must he be in showing that his injury resulted from medical negligence instead of bad luck? How soon must he show that diligence? At what level of detail and in what procedural form should these showings be made, and what are the consequences for failing to comply with any of them?

The legislature may make these and other policy determinations at whatever level of granularity it thinks best, subject only to constitutional constraints. It can and has imposed special burdens on plaintiffs bringing medical-liability claims as opposed to those who allege other kinds of torts. If the legislature concludes, for example, that allowing too many frivolous suits against doctors generates worse medical outcomes in general—because of the exodus of doctors, the increased cost and thus unaffordability of medical services, and the resulting inability of potential patients to receive needed services—an obvious response is a statute that aims to quickly screen out meritless claims. The courts may do none of those things, especially after the legislature has occupied a field by legislation. *See, e.g.*, *Elephant Ins. Co. v. Kenyon*, 644 S.W.3d 137, 158–59 (Tex. 2022) (Young, J., concurring). The legislature is not similarly bound precisely because, in conjunction with the governor, it is the State's primary policy-making authority.

* * *

With these thoughts, I gladly concur.

Evan A. Young
Justice

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