Supreme Court of Texas

No. 26-0005

McKesson Medical-Surgical Inc.,

Petitioner,

v.

Brian Cleveland, individually and on behalf of the Estate of Jenifer Cleveland and as next friend of J.W., a minor, Jessica Williams, Colby Williams, and Toby Williams,

Respondents

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

PER CURIAM

Petitioner seeks review of the denial of its petition for permissive interlocutory appeal. The court of appeals held that there was no "substantial ground for difference of opinion" on a controlling question of law, TEX. CIV. PRAC. & REM. CODE § 51.014(d)(1), because one other Texas court of appeals had answered the statutory construction question presented and done so in a way that did not conflict with this Court's precedents. This was a misapplication of the governing standard. Where, as here, a statute may be given more than one plausible reading

and the statutory interpretation question has not been decided by this Court, there is "a substantial ground for difference of opinion." Because the court of appeals reached the contrary conclusion, we reverse and direct that court to accept the appeal. *See id.* § 51.014(h).

I

Jenifer Cleveland died shortly after a visit to a medical spa, allegedly because of an infusion containing TPN electrolytes. Her family sued the spa and several others, including McKesson Medical-Surgical Inc., a distributor that sold the electrolytes to the spa. Plaintiffs allege that McKesson negligently permitted the spa's owner, who had no medical license, to purchase TPN electrolytes for shipment directly to the spa, where they have no known therapeutic use.

McKesson moved to dismiss based on Civil Practice and Remedies Code Section 82.003(a), which provides: "A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves" one of seven enumerated exceptions. Plaintiffs responded that this statute applies only to products liability actions and does not apply here because plaintiffs do not allege that the TPN electrolytes were defective. Rather, plaintiffs' theory of liability is that McKesson was negligent in creating an online portal that allowed someone without a medical license to order TPN electrolytes for shipment to a medical spa.

The trial court denied McKesson's motion to dismiss, concluding that Section 82.003(a) "does not apply to sellers, like McKesson, in cases that are not 'product liability actions.'" The court acknowledged that there is scant authority on the issue. It also noted that the lone

appellate decision on point, which supports its conclusion—*Lopez v. Huron*, 490 S.W.3d 517 (Tex. App.—San Antonio 2016, no pet.)—is "potentially doubtful" because "the plain language of [Section] 82.003(a) does not limit its application to 'product liability actions.'" In the end, the court granted McKesson permission to appeal, describing the controlling legal question as "whether [Section] 82.003(a) . . . applies to sellers in cases that are not 'product liability actions' or whether it applies only to sellers in 'products liability actions' or cases where damages are allegedly caused by defective products."

II

The court of appeals denied McKesson's petition for permissive appeal, explaining that, in its view, McKesson had not shown "a substantial ground for difference of opinion" regarding the controlling legal question. ___ S.W.3d ___, 2025 WL 3220088, at *1 (Tex. App.—Dallas Nov. 18, 2025). Like the trial court, the court of appeals noted that only *Lopez* has squarely addressed the controlling legal question. *See id.* at *4. The court seemingly determined that the absence of any conflicting authority pointed against accepting the appeal. *See id.* But that conclusion does not follow. True, the existence of conflicting authorities strongly suggests "a substantial ground for difference of opinion," but an actual conflict among the courts of appeals is not necessary when the case presents a potentially dispositive statutory construction question that this Court has not resolved. Indeed, a paucity of authority weighs in favor of permitting the appeal when the statute is subject to competing reasonable interpretations. And *Lopez*'s express acknowledgement that its conclusion may have departed from

the statute's text, *see* 490 S.W.3d at 520, while not necessary to establish "a substantial ground for difference of opinion," should have signaled to the court of appeals, as it did to the trial court, that reasonable jurists could disagree with *Lopez* regarding Section 82.003(a)'s scope.

Here, the trial court acknowledged that Section 82.003(a) may have more than one plausible reading and that this Court has not yet weighed in on the proper interpretation. Under these circumstances, there is "a substantial ground for difference of opinion." TEX. CIV. PRAC. & REM. CODE § 51.014(d)(1).[1] Whether or not the broader statutory construction principles the court of appeals recited, *see* 2025 WL 3220088, at *4-5, counsel toward answering the controlling question in line with *Lopez*—an issue we do not decide—their *potential* clash with Section 82.003(a)'s plain text substantiates that an interlocutory appeal is appropriate.

To bolster its conclusion that no substantial ground for difference of opinion exists, the court of appeals suggested that passing comments in *Amazon.com, Inc. v. McMillan*, 625 S.W.3d 101 (Tex. 2021), support *Lopez*'s holding. *See* 2025 WL 3220088, at *4. But the court read too much into *McMillan*'s statement that Section 82.003 "provides that non-manufacturing sellers are not liable *for product defects*." 625

[1] This is, of course, not the only way in which "a substantial ground for difference of opinion" may be shown. For example, we recently held that the standard is satisfied, and a permissive appeal is proper, when a trial court's decision conflicts with controlling precedent. *Helena Chem. Co. v. Bales*, ___ S.W.3d ___, 2026 WL 1354751, at *1 (Tex. May 15, 2026). "Substantial ground for difference of opinion" is not a restrictive standard—it is a broad standard that facilitates permissive appeals of genuinely disputed legal questions in varied contexts.

S.W.3d at 109 (emphasis added). Because *McMillan* indisputably involved alleged product defects, *see id.* at 105, the Court did not confront the statutory question about Section 82.003(a)'s scope that is presented here.

III

The court of appeals erred in concluding that McKesson did not satisfy Section 51.014(d)(1). Given the court of appeals' holding, it did not address Section 51.014(d)'s second requirement—whether "an immediate appeal . . . may materially advance the ultimate termination of the litigation." TEX. CIV. PRAC. & REM. CODE § 51.014(d)(2). The trial court found this requirement satisfied because an immediate appeal would "resolve a dispositive legal question prior to trial without delaying the case or discovery" and "a ruling in McKesson's favor on the controlling question of law eliminates all potential claims against McKesson."

This Court has previously concluded that an immediate appeal was warranted where its resolution would "forestall burdensome and costly international discovery" and "eliminate the need for further litigation" on the controlling legal question. *See Sabre Travel Int'l, Ltd. v. Deutsche Lufthansa AG*, 567 S.W.3d 725, 736 (Tex. 2019). Other courts have recognized that Section 51.014(d)(2) is satisfied where the appeal would dispose of some, but not all, of the claims against a defendant. *See, e.g.*, *ADT Sec. Servs., Inc. v. Van Peterson Fine Jewelers*, 390 S.W.3d 603, 604 (Tex. App.—Dallas 2012, no pet.).

Plaintiffs offer two reasons why an immediate appeal would not facilitate the ultimate termination of this litigation. First, they assert

that because certain discovery issues overlap among all defendants, an immediate appeal would neither streamline the litigation nor dispose of all claims. Second, they contend that the issue of whether Section 82.003(a)'s exceptions apply to their claims against McKesson would prevent McKesson's dismissal even if the statute applies. But plaintiffs did not allege that their claims fall within any of Section 82.003(a)'s enumerated exceptions. So if, as McKesson contends, Section 82.003(a) applies, it would dispose of all pleaded claims against McKesson. This is sufficient to meet Section 51.014(d)'s second requirement. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(d)(2). Indeed, it is precisely the kind of case in which an immediate appeal "would allow for the efficient correction of error" instead of risking the waste of judicial and party resources. *See Helena Chem. Co. v. Bales*, ___ S.W.3d ___, 2026 WL 1354751, at *2 (Tex. May 15, 2026).

IV

The court of appeals erred in concluding that there was no "substantial ground for difference of opinion" on the controlling legal question. The court should have accepted the appeal because (1) the statutory construction question has not been decided by this Court and has more than one plausible answer and (2) resolution of the question may materially advance the litigation's termination. For these reasons, without requesting merits briefing or hearing oral argument, *see* TEX. R. APP. P. 55.1, 59.1, we grant the petition for review and direct the court of appeals to accept the appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(h).

OPINION DELIVERED: June 26, 2026