

# IN THE SUPREME COURT OF TEXAS

=====  
No. 07-0094  
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PHILIP A. MOORE, M.D., PETITIONER,

v.

KRISTY GATICA, RESPONDENT

=====  
ON PETITION FOR REVIEW FROM THE  
COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS  
=====

## PER CURIAM

Kristy Gatica filed this suit claiming Dr. Phillip A. Moore was negligent in performing a laparoscopic appendectomy. As required by statute, within 120 days of filing Gatica served a curriculum vitae and expert report signed by Dr. Louis F. Silverman supporting her claim.<sup>1</sup> Dr. Moore moved for dismissal and attorney's fees on the ground that the expert report was inadequate,<sup>2</sup> but the trial court denied the motion.<sup>3</sup>

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<sup>1</sup> TEX. CIV. PRAC. & REM. CODE § 74.351(a).

<sup>2</sup> *Id.* § 74.351(b).

<sup>3</sup> Although finding the report adequate, the trial court also granted Gatica 30 days to amend the expert report if she wished. *See id.* § 74.351(c). As Gatica chose to stand on the existing report, the only issue in this appeal is the trial court's finding that the original report was adequate.

Dr. Moore filed a timely interlocutory appeal with the Second Court of Appeals, which dismissed for want of jurisdiction.<sup>4</sup> For the reasons stated today in *Lewis v. Funderburk*,<sup>5</sup> we hold that Dr. Moore's motion seeking dismissal and fees was a motion pursuant to section 74.351(b), and thus reviewable by interlocutory appeal when the trial court denied it.<sup>6</sup> The court of appeals erred by concluding otherwise.

Accordingly, we grant the petition for review, and without hearing oral argument, TEX. R. APP. P. 59.1, we reverse the court of appeals' judgment and remand the case to that court to consider the remaining arguments raised by the interlocutory appeal.

OPINION DELIVERED: April 11, 2008

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<sup>4</sup> \_\_\_ S.W.3d \_\_\_.

<sup>5</sup> \_\_\_ S.W.3d \_\_\_ (Tex. 2007).

<sup>6</sup> TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).