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SUPREME COURT OF TEXAS
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NO. 19-0353

IN THE SUPREME COURT OF TEXAS

HEATHER KUTYBA,
Petitioner

v.

ASHLEE E. WATTS, D.V.M. AND TEXAS A&M UNIVERSITY,
Respondents

On Petition for Review from the Tenth District Court of Appeals at Waco
No. 10-18-00168-CV

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR REVIEW

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ARGUMENT

I. The Court of Appeals and Respondents ignore that a cardinal rule of statutory construction, even when reviewing a statute's plain meaning, is to avoid absurd results.

Respondents Texas A&M University et al. argue that the Tenth Court of Appeals correctly interpreted the plain language of the Texas Tort Claims Act. But they ignore the absurd results that follow from their (and the Tenth Court's) proposed interpretation. As stated, those absurd results were pointedly identified by the trial court—namely, that interpreting "death" to *not* include animal patients invites the "worst veterinarians" to work at state university hospitals like Texas A&M, because those particular vets can be forever shielded from liability, unlike their private-practice counterparts (who are not). III R.R. at 5:17-25. Thus, even though private veterinary and medical doctors can be held liable for equivalent acts (*i.e.*, the negligent death of an animal or person), as well as state-employed medical doctors at university hospitals, the state-employed veterinarians are to be afforded a special exception and forever shielded, so this interpretation goes.

It is a well-established rule of construction that even a plain meaning interpretation of a statute should not lead to absurd results. *Texas Lottery Com'n v. First State Bank of DeQueen,* 325 S.W.3d 628, 635 (Tex. 2010) ("We rely on the plain meaning of the text as expressing legislative intent unless … the plain meaning leads to absurd results."); *Fitzgerald v. Advanced Spine Fixation Sys., Inc*., 996

S.W.2d 864, 867 (Tex. 1999) ("Our construction of the plain language of [the statute] must avoid absurd results if the language will allow.").

Respondents do not wrestle with the problem created by their proposed construction. They offer no explanation for why it would be reasonable, or good policy, to shield state university veterinarians from liability. Instead, they brush off the absurd result from their interpretation as a "mere oddity" (Resp. at 5-6), suggesting it is not worthy of review. If anything, an "oddity" is a reason for granting review. Ms. Kutyba urges this Court to undertake review of the self-serving liability shield created by the Respondents' and the Tenth Court's interpretation. Texas A&M veterinary doctors treat thousands of animal patients a year. Other state animal hospitals do the same. This is a state-wide issue.

Respondents get tangled in their own attempt to explain away the problem of the competing statutory interpretations. Respondents argue that Petitioner's reading of the statute could lead to liability for a state employee who "negligently killed grass with his shoe." (Resp. at 6). But Respondents apparently fail to understand that the provisions of the Texas Tort Claims Act only waive sovereign immunity "if the governmental unit would, were it a private person, be liable to the claimant according to Texas law." Tex. Civ. Prac. & Rem. Code § 101.021(2). Respondents cannot provide any case law where a private doctor is held liable for killing grass with his shoe, and thus their example fails by the terms of the Texas statute. By contrast, Ms.

Kutyba did provide law where a veterinary doctor is liable for the death of a horse, satisfying the Tort Claims Act's requirement. Ms. Kutyba established that her allegations would support a negligence claim against TAMU and Dr. Watts, were they private persons. *See Gabriel v. Lovewell*, 164 S.W.3d 835, 849 (Tex. App.—Texarkana 2005) (affirming jury finding of negligence based on death of a horse); *Rollins v. Williams*, No. 99-07446-J, 2001 WL 1519328 (191st Dist. Ct., Dallas County, Tex. Jan. 15, 2001) (jury verdict for plaintiff based on veterinary negligence causing death of horse); *Pruitt v. Box,* 984 S.W.2d 709, 711 (Tex. App.—El Paso 1998, no pet.). Ms. Kutyba is not asking for anything more than allowed by existing Texas law, consistent with case law and the terms of the Tort Claims Act.

Petitioner Kutyba provided citations to other state statutes and case law, evidencing the policy of this State to hold veterinary doctors to uniform standards of care, and to similar standards of care as their medical counterparts. (Petition at 10-13.) Where, as here, the Tenth Court of Appeals and Respondent's interpretation of the plain language leads to an absurd result, which also conflicts with other expressions of state policy, review by this Court is warranted.

II. Whether or not a horse is considered "property" is not at issue; the issue is whether the Legislature intended to hold governmental veterinary doctors liable under both subsections (1) and (2) of § 101.021, just like their medical doctor counterparts.

The statutory construction question presented by this case is whether the term "death" in subsection (2) of § 101.021 should be interpreted to include both human

and animal deaths. Nowhere does the Texas Tort Claims Act limit the word "death" to the death of a person; there are several defined terms in the statute, but "death" is not one of them. *See* Tex. Civ. Prac. & Rem. Code § 101.001. As a general matter, "personal injury" and "death" are two specific and separate areas of liability for which a governmental entity may be held liable. *See Scott v. Prairie View A&M Univ.*, 7 S.W.3d 717, 720-21 (Tex. App.—Houston [1st Dist.] 1999) (collecting cases).

While Respondents try to focus on categorizing animals as property, this does not answer the question of how "death" should be construed in subsection (2) of § 101.021. Under the Texas Tort Claims Act, subsection (1) of § 101.021 covers governmental liability for property damage, personal injury, and death for use of a motor vehicle; while subsection (2) covers personal injury and death for governmental use of personal property. *See* Tex. Civ. Prac. & Rem. Code § 101.021. Subsection (1) may include liability for animal death, *see Davis v. City of Lubbock*, No. 07-16-00080-CV, 2018 WL 736344, *5-6 (Tex. App.—Amarillo 2018, no pet.), not just because of liability for property damage, but also because of the explicit liability under the term "death." Both subsections only permit liability if such would be possible for a private person under Texas law.

The key statutory construction question arises: Why, according to the interpretation proposed by the court of appeals and Respondents, would the

Legislature consider animal death only in § 101.021 subsection (1) and not in subsection (2)—when the term "death" appears in both subsections, when medical doctors can be liable for their patient deaths under both subsections, and when any doctor rarely encounters his patient while driving a car, but rather while using personal property in a hospital setting?

As always, the primary objective of statutory construction is to ascertain legislative intent. And, as the Tenth Court of Appeals acknowledged, courts presume that the Legislature intended a just and reasonable result. App'x C (citing *Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 930 (Tex. 2010)); *see also Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing Tex. Gov't Code 311.021). Here, the just and reasonable result is that animal death is contemplated under both subsections because the term "death" appears in both subsections, and because medical physicians may be accountable under both subsections. It is just and reasonable to hold all Texas medical practitioners—whether physicians or veterinarians—accountable under the same standards. Further, veterinarians, like physicians, most typically encounter their patients in the hospital setting, while using personal property, and not on the roads while using a motor vehicle. It would be unreasonable for veterinary doctors only liability exposure to be in subsection (1), related to motor vehicles, while uniquely shielded from liability under subsection (2), in a hospital setting.

In determining legislative intent, courts are also instructed to consider "the consequences of a particular construction" and are to "derive the Legislature's intent from the statute as a whole." *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 51 (Tex. 2014); *Ken Petroleum Corp. v. Questor Drilling Corp*., 24 S.W.3d 344, 350 (Tex. 2000). Using these accepted tools of statutory construction, Petitioner Kutyba's proposed construction is consistent with careful consideration of the consequences of construction, one that holds veterinary doctors appropriately accountable. It is consistent with a construction that considers the statute as a whole, in context. Specifically, it is consistent with:

- The Texas Education Code, which expressly acknowledges the potential for lawsuits against TAMU veterinarians (e.g., Tex. Educ. Code § 59.08);

- Texas statutes and case law which treat veterinarians, with animal patients, and physicians and other medical providers, with human patients, as functionally equivalent; and

- This state's standard of care for veterinarians, which veterinarians must meet, irrespective of whether they are private or governmental actors (Tex. Admin. Code § 573.22).

See generally Petition at 10-13.

The key construction exercise here is to review the Texas Tort Claims Act in its statutory context. Ms. Kutyba asks this Court to review her case, and to advance a construction that honors its consequences and the broader statutory context, and avoids undermining existing law and state policy.

III. The parties' disagreement over the statute's interpretation indicates ambiguity, making this case—as an issue of first impression—particularly well suited for this Court's review.

Whether statutory language is ambiguous is a matter of law for courts to decide, and language is ambiguous when it yields more than one reasonable interpretation. *Sw. Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 405 (Tex. 2016) (citing *Combs v. Roark Amusement & Vending*, L.P., 422 S.W.3d 632, 635 (Tex. 2013)). Here, the clear disagreement about the plain meaning of the word "death" in the context of the Texas Tort Claims Act indicates ambiguity of the term, and arguably, more than one reasonable interpretation of the statute is possible based on the parties' (and lower courts') stated positions.

Contrary to Respondents' claim, this is not a "run of the mill" statutory interpretation case, but rather this case presents an issue of first impression. The liability exposure for state university veterinary doctors across the state of Texas has not been addressed by this Court, and it is particularly suited for this Court's review. Whether there are to be uniform standards of liability for medical and veterinary doctors is of state-wide importance.

As this Court has acknowledged, time and again, the primary rule in statutory interpretation is that a court must give effect to legislative intent, considering the language of the statute, the objective sought, and the consequences that would flow from alternative constructions. *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 383

(Tex. 2000). When statutory text is susceptible of more than one reasonable interpretation is it appropriate to look beyond its language for assistance in determining legislative intent. *Texas Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). This is precisely what Ms. Kutyba has urged here.

The court of appeals myopically focused on the words "personal injury and death"; it did not look at the whole statutory context, nor did it consider the policies of this State to create uniform standards of liability for veterinarians (whether public or private) and for medical doctors. The court of appeals provided no policy reasons to justify why state university veterinarians should enjoy a liability shield in the hospital setting, nor justified why this absurd result should survive. Ms. Kutyba urges that there is no reasonable policy justifying the special status afforded by the court of appeals interpretation; there is nothing in the plain language of the statute, or the statute's context, suggesting the Legislature intended Respondents' liability shield. This Court's review is warranted to address whether the absurd result presented by the Tenth Court of Appeals—to forever shield a state-employed vet from liability—was the will of the legislature in enacting the Tort Claims Act.

PRAYER

Ms. Kutyba respectfully requests that this Court grant the petition and reverse the judgment of the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on August 7, 2019, I served a copy of this Petition via the CM/ECF electronic noticing system and by electronic mail on the following:

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CERTIFICATE OF COMPLIANCE

As required by Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this petition contains 1944 words, excluding the parts of the brief exempted by Rule 9.4(i)(1).

/s/ Charles W. Irvine
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