

Texas doctor can't be sued in New Mexico, court rules

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A former Texas Tech University surgeon accused of botching a Curry County woman's gastric bypass surgery in 2004 can't be sued for malpractice in New Mexico, the state Supreme Court has ruled. The state's high court issued its decision Monday. "We reverse the Court of Appeals and the district court," Justice Edward L. Chávez wrote in his majority opinion, which was signed onto by Justices Petra Jimenez Maes and Judith K. Nakamura and Judge Linda M. Vanzi, a Court of Appeals judge designated to hear the case. "The district court shall dismiss Montaño's suit without prejudice."

The case has garnered significant attention in both New Mexico and Texas, with three dozen doctor groups and hospitals in both states signing on to a friend of the court brief in 2015. They argued that allowing the lawsuit to move forward could have a disastrous effect on patient care in eastern New Mexico – where doctors are scarce – because it might make Texas providers reluctant to care for New Mexico patients.

"It's clearly the right result," said Alice T. Lorenz, one of the Albuquerque attorneys who worked on the friend of the court brief filed on behalf of the hospitals and doctor groups.

Attorneys for Kimberly Montaño, the woman who filed the malpractice suit, and the New Mexico Trial Lawyers Association had countered that if Texas law were to prevail, Montaño would have no forum in which to pursue redress for the permanent harm she suffered. The Trial Lawyers Association also accused the medical groups of engaging in scare tactics.

"Obviously, we're disappointed for Ms. Montaño," said Jerry Wertheim, one of Montaño's Santa Fe attorneys. "I understand the court's ruling. It was an important issue of comity, how one state respects another state's laws."

Wertheim said the instances in which Texas law allows malpractice lawsuits against hospitals like Texas Tech University Medical Center are so narrow that it would not be possible to file suit against it, and that was probably never a possibility under the facts of Montaño's case. He said Texas has very restrictive laws when it comes to medical malpractice lawsuits.

"That's something all New Mexicans should consider," he said. Wertheim added that Montaño's lawyers need to evaluate how Monday's ruling impacts the portion of the lawsuit against Lovelace Insurance Co.

Dana Simmons Hardy, one of the Santa Fe attorneys representing Dr. Eldo Frezza, praised the ruling. Frezza is the former chief of bariatric surgery at Texas Tech University Health Sciences Center who performed Montaño's surgery. "I think it's a good decision for New Mexico in several ways," she said. "I think it protects New Mexico citizens who have to travel to receive medical care in other states."

At issue in this case was whether Montaño, who underwent gastric bypass surgery in Lubbock, Texas, could pursue her malpractice lawsuit in New Mexico courts under New Mexico law. Texas law bars lawsuits against

individual state employees. Frezza was a state employee.

Montaño has said she had the surgery in Texas because that was the only way her insurer would cover it. Montaño filed her lawsuit in Albuquerque in 2011. The suit states that she complained of abdominal pain soon after the 2004 surgery and returned to Frezza, who told her discomfort was normal and all was well. Her pain became so severe that she was admitted to various other medical centers multiple times.

The suit contends that in 2010, she had a procedure by a different doctor who found that Frezza's surgery "had left a tangled network of sutures" that caused the pain. Montaño alleged that Frezza's negligence left her with an infection, the need for lifelong care from a gastroenterologist and a shortened life expectancy. She had been seeking recovery for lost wages, medical costs and punitive damages.

Frezza's attorneys filed a motion to dismiss the lawsuit, arguing that Texas law should apply. A New Mexico district judge ruled that the New Mexico case should move forward, and the state Court of Appeals agreed.

In reaching its decision, the Supreme Court undertook an exhaustive analysis on whether respecting Texas law would undermine New Mexico's own public policy. In the end, most justices agreed that New Mexico's public policy wouldn't be undermined by deferring to Texas law.

"Access to cross-border health care for individuals living in rural parts of New Mexico is an additional consideration that tempers New Mexico's interest in applying its law to this case," Justice Chávez wrote in his majority opinion.

Justice Barbara J. Vigil issued her own opinion, dissenting in part, from the court majority. "New Mexico has a strong interest in enabling its residents to recover for medical negligence, particularly those who have limited options," Vigil wrote.