REVERSE AND REMAND and Opinion Filed December 2, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00679-CV

DALLAS MEDICAL CENTER, LLC (D/B/A DALLAS MEDICAL CENTER), PRIME HEALTHCARE SERVICES - MESQUITE, LLC (D/B/A DALLAS REGIONAL MEDICAL CENTER), AND KNAPP MEDICAL CENTER, Appellants
V.
CIGNA HEALTHCARE OF TEXAS, INC., CIGNA HEALTH AND LIFE INSURANCE COMPANY, AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellees

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-01762

MEMORANDUM OPINION

Before Justices Kennedy, Barbare, and Jackson
Opinion by Justice Kennedy

Appellants Dallas Medical Center, LLC, Prime Healthcare Services – Mesquite, LLC, and Knapp Medical Center (collectively, the Hospitals) filed suit against appellees Cigna Healthcare of Texas, Inc., Cigna Health and Life Insurance Company, and Connecticut General Life Insurance Company (collectively, Cigna), seeking to recover payment for treatment the Hospitals provided to Cigna enrollees. Cigna filed a plea to the jurisdiction, asserting the Hospitals' claims failed as a matter

of law because the sections of the Texas Insurance Code referred to as the Emergency Care Statutes, *see* TEX. INS. CODE §§ 1271.155, 1301.0053, 1301.155, do not provide for any private right of action. The trial court granted the plea, and the Hospitals amended their petition. Cigna filed a second plea to the jurisdiction, and the trial court signed an order granting the second plea to the jurisdiction and dismissing all of the Hospitals' claims with prejudice.

In their first four issues, the Hospitals claim the trial court erred in holding it lacks subject matter jurisdiction to resolve the Hospitals' breach of express contract, breach of implied contract, and promissory estoppel claims. In their fifth issue, the Hospitals assert the trial court erred in holding it lacks subject matter jurisdiction to resolve the Hospitals' claim for attorney's fees. In their sixth issue, the Hospitals contend the trial court erred by granting Cigna's plea and dismissing the Hospitals' claims with prejudice without giving them an opportunity to replead.

We reverse the trial court's order and remand the Hospitals' remaining claims to the trial court for further proceedings. Because all dispositive issues are settled in law, we issue this memorandum opinion. *See* TEX. R. APP. P. 47.2(a), 47.4.

BACKGROUND

On February 6, 2023, the Hospitals filed their original petition against Cigna, alleging the Hospitals had provided inpatient stabilizing and post-stabilization care to Cigna enrollees who originally presented to the Hospitals' emergency department. The Hospitals notified Cigna of each patient's admission and asked Cigna to provide

valid, binding authorizations or to arrange prompt transfer of the patient to another facility. The Hospitals further notified Cigna that the care provided to Cigna enrollees would be charged at the Hospitals' usual and customary rate until the patient was transferred. In their original petition, the Hospitals alleged that Cigna failed to arrange for the patients to be transferred and thereby agreed to pay the Hospitals "the usual and customary rate for that care, and the Hospitals justifiably relied upon Cigna's promise to pay." The Hospitals brought claims for breach of implied-in-fact contract, promissory estoppel, and negligent misrepresentation, seeking to recover damages in the amount of the difference between the lower amount Cigna reimbursed the Hospitals at and the usual and customary rate.

On March 24, Cigna filed its first plea to the jurisdiction, arguing the Hospitals were "attempting to repackage violations of the emergency care provisions of the Texas Insurance Code as state law claims" and that such claims were barred because no private right of action exists under the Texas Insurance Code. The Hospitals responded, asserting their claims were properly brought contractual and quasi-contractual claims, not claims under the Texas Insurance Code. On May 18, the trial court conducted a hearing on Cigna's plea and, later that day, signed an order granting Cigna's plea, dismissing the Hospitals' claims with prejudice. The trial court later granted the Hospitals' unopposed motion to modify the May 18 order, and on July 6, the trial court signed an order granting the Hospitals leave to file a first amended petition.

On July 17, the Hospitals filed their first amended petition, asserting claims for breach of express contract, breach of implied contract, and promissory estoppel. According to the first amended petition, the Hospitals had provided medical care and treatment to Cigna's members, were not in Cigna's network of participating providers,[1] notified Cigna the members were seeking medical care at the Hospitals, requested the Cigna authorize the Hospitals to provide medical care and treatment to the members, and notified Cigna of the Hospitals' understanding and expectation that they would be paid for such care. The amended petition further stated that Cigna had accepted the Hospitals' offers and agreed to pay for the care provided by the Hospitals by issuing the requested authorizations, but that Cigna reimbursed the Hospitals for less than the amounts Cigna promised to pay.

On December 14, Cigna filed its second plea to the jurisdiction, arguing the Hospitals' amended petition continued to allege violations of the emergency care provisions of the Texas Insurance Code "disguise[d] . . . as state law claims" and that doing so was improper, such that the trial court should dismiss the claims for lack of subject matter jurisdiction. In its second plea, Cigna also argued no express contract satisfying the statute of frauds exists between the Hospitals and Cigna, the Hospitals waited too long to enforce any such contract, the amended petition fails to

[1] The amended petition clarified that, "'Participating' or 'in-network' providers typically agree to accept pre-negotiated discounted rates for their services in exchange for the increased patient volume afforded by being part of the payor's network, among other benefits of being an in-network provider. 'Nonparticipating' or 'out-of-network' providers, by contrast, have not agreed in advance to accept any discount from their billed charges for the services they provide."

allege sufficiently definite terms to satisfy a claim for breach of implied contract, and the promise element alleged in the Hospitals' promissory estoppel claim was insufficiently definite to be enforced.

On February 29, 2024, the Hospitals responded to Cigna's second plea to the jurisdiction, asserting that "this is no longer a case about emergency services" and that they "are no longer seeking payment for emergency services rendered to Cigna beneficiaries." Instead, the Hospitals allege that the Hospitals had notified Cigna that the patients had presented for treatment and offered to provide additional, non-emergency care to the patients in exchange for payment by Cigna and that Cigna responded with the requested authorizations. The Hospitals also responded that a plea to the jurisdiction is not the proper vehicle to assert a statute-of-frauds challenge or a limitations defense. Attached to the Hospitals' response was an email exchange between counsel for the parties referencing a spreadsheet of a list of 247 patient claims. However, the spreadsheet itself is not included in the clerk's record.

On March 4, Cigna filed a reply in support of its second plea, in which it included a screenshot of a portion of the spreadsheet referenced in the Hospitals' response, including the account number, medical record number, and admittance date of a selected patient, as well as an attached notice sent from the Hospitals to Cigna with matching account number, medical record number, and admittance date. The notice indicates the patient in question "presented for treatment in our

emergency department" and references the emergency care provisions of the Texas Insurance Code, sections 1271.155, 1301.0053, and 1301.155.

On March 6, the trial court conducted a hearing on Cigna's second plea, and on March 7, the trial court signed an order granting the second plea and dismissing the Hospitals' claims with prejudice. On April 5, the Hospitals filed a motion to modify the March 7 order, but the trial court did not rule on that motion. On June 4, the Hospitals filed their notice of appeal.

DISCUSSION

I. Preemption by Texas Insurance Code

In their first issue, the Hospitals argue the trial court erred by granting the second plea to the jurisdiction because none of its claims in its amended petition are preempted by the emergency care sections of the Texas Insurance Code. The Hospitals allege they sought payment for only non-emergency post-stabilization care or elective services pursuant to Cigna's promises to pay the Hospitals for such care. Cigna responds that the Hospitals' claims originate from emergent care and cite as support of same evidence from its reply in support of its second plea to the jurisdiction, as well as evidence the Hospitals offered in response to the first plea to the jurisdiction.

A. Emergency Care Sections of the Texas Insurance Code

Section 1271.155(a) of the Insurance Code mandates that "[a] health maintenance organization shall pay for emergency care performed by non-network

physicians or providers at the usual and customary rate or at an agreed rate." INS. § 1271.155(a). Similarly, sections 1301.0053 and 1301.155 require a health-insurance company to pay out-of-network providers for emergency care rendered to the company's insureds "at the usual and customary rate." *See Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 427 (Tex. 2023) (citing INS. §§ 1271.155, 1301.0053, 1301.155). "Emergency care" means health care services provided in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could: (A) place the individual's health in serious jeopardy; (B) result in serious impairment to bodily functions; (C) result in serious dysfunction of a bodily organ or part; (D) result in serious disfigurement; or (E) for a pregnant woman, result in serious jeopardy to the health of the fetus. INS. § 843.002(7); *see also* § 1271.001 ("In this chapter, terms defined by Section 843.002 have the meanings assigned by that section.") and § 1301.155(a) (defining "emergency care"). The Texas Supreme Court addressed the question of whether the Insurance Code created a private cause of action for claims under sections 1271.155, 1301.0053, 1301.155 and held that they do not. *See Molina*, 659 S.W.3d at 436.

B. Appropriate Standard of Review—Plea to the Jurisdiction, Rule 91a, or Traditional Motion for Summary Judgment

After addressing the issue of whether a private action is barred by the Insurance Code, the Supreme Court discussed whether that issue is one of standing and thus properly raised in a plea to the jurisdiction. *See Molina*, 659 S.W.3d at 441. The Supreme Court concluded it was not and instead stated that an issue of "law pertaining to the merits that should have been raised in the trial court by traditional motion for summary judgment or under Rule 91a—not in a plea to the jurisdiction." *Id.* (citing TEX. R. CIV. P. 166a, 91a). However, because the parties agreed the Supreme Court could render the decision on the merits, the Supreme Court did so. *See id.* Here, the Hospitals cite the *Molina* opinion and urge this Court "consider only whether the Hospitals have standing to assert the claims pleaded in the Amended Petition, not the merits of the Hospitals' claims."

A plea to the jurisdiction is a dilatory plea, the purpose of which is generally to defeat an action "without regard to whether the claims asserted have merit." *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012) (quoting *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000)). Typically, the plea challenges whether the plaintiff has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the case. *Id.* In that instance, we review a trial court's ruling on a plea to the jurisdiction *de novo*, we construe the pleadings liberally in favor of the pleader, and look to the pleader's intent to determine whether the facts alleged affirmatively demonstrate the trial

court's jurisdiction to hear the cause. *See Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 620 S.W.3d 458, 463 (Tex. App.—Dallas 2021) aff'd 659 S.W.3d 424 (Tex. 2023) (citing *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004)).

However, a plea to the jurisdiction can also properly challenge the existence of those very jurisdictional facts. *Garcia*, 372 S.W.3d at 635. In those cases, the court can consider evidence as necessary to resolve any dispute over those facts, even if that evidence "implicates both the subject-matter jurisdiction of the court and the merits of the case." *Id.* (quoting *Miranda*, 133 S.W.3d at 227). In those situations, a trial court's review of a plea to the jurisdiction mirrors that of a traditional summary judgment motion. *Garcia*, 372 S.W.3d at 635. Initially, the defendant carries the burden to meet the summary judgment proof standard for its assertion that the trial court lacks jurisdiction. *Id.* If it does, the plaintiff is then required to show that a disputed material fact exists regarding the jurisdictional issue. *Id.* If a fact issue exists, the trial court should deny the plea. *Id.* But if the relevant evidence is undisputed or the plaintiff fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea as a matter of law. *Id.*

We note that, as with our review of a plea to the jurisdiction, our review of a 91a ruling is de novo. *See Cooper v. Mowla*, No. 05-21-01061-CV, 2023 WL 3964008, at *2 (Tex. App.—Dallas June 13, 2023, no pet.) (mem. op.) (citing *San Jacinto River Auth. v. Medina*, 627 S.W.3d 618, 628 (Tex. 2021)). Pursuant to that

rule, a party may move to dismiss a cause of action on the grounds that it has "no basis in law or fact." TEX. R. CIV. P. 91a.1. A cause of action has no basis in law "if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought." *Id.* A cause of action has no basis in fact "if no reasonable person could believe the facts pleaded." *Id.*

And, in our review of a 91a ruling, we apply a fair-notice pleading standard to determine whether the allegations of the petition are sufficient to allege a cause of action, which is similar to that of our review of a plea to the jurisdiction's challenge to the sufficiency of a petition's allegations to invoke the court's jurisdiction. *See Thomas v. 462 Thomas Fam. Props., LP*, 559 S.W.3d 634, 639 (Tex. App.—Dallas 2018, pet. denied). In applying this standard in the rule 91a context, "we must construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and accept as true the factual allegations in the pleadings to determine if the cause of action has a basis in law or fact." *See In re RNDC Tex., LLC*, No. 05-18-00555-CV, 2018 WL 2773262, at *1 (Tex. App.—Dallas, June 11, 2018, no pet.) (mem. op.). If something in the pleading or "any pleading exhibits permitted by rule 59" triggers a clear legal bar to a claim, we will affirm the grant of the rule 91a motion. *See id.* ("[I]f nothing in the pleading itself triggers a clear legal bar to the claim, then there is a basis in law and the motion should be denied.").

C. Analysis

Cigna's second plea challenged the Hospitals' amended petition as "attempts to disguise violations of the emergency care provisions of the Texas Insurance Code as state law claims" and did not offer any evidence until its reply filed in support of its second plea and after the Hospitals file their response to the second plea to which the Hospitals attached an email exchange between the parties' counsel discussing a spreadsheet of a list of the individual patient claims the Hospitals were seeking payment for. Cigna's second plea argued that because the Hospitals lacked a private right of action to recover under the Insurance Code, they lacked standing to bring their claims and the trial court lacked subject matter jurisdiction over same. We construe this challenge to be to the sufficiency of the allegations in Hospitals' amended petition and thus first consider whether the trial court erred by dismissing the Hospitals' claims as barred by the emergency care sections of the Insurance Code.

Reviewing the Hospitals' amended petition and construing it liberally in the Hospitals' favor, we agree with the Hospitals that their claims do not refer or otherwise describe any "emergency" or medical care or treatment to "stabilize" a patient or any other care that could be construed as "emergency care" under section 1301.155(a). *See* INS. § 1301.155(a). Instead, the amended petition alleges the Hospitals provided to Cigna's insured members "healthcare services" and "medical care and treatment." Further, the amended petition alleges that Cigna provided

written or verbal authorization to the Hospitals to provide care to its insured members and agreeing to pay for that care. These allegations are in contrast to the original petition's allegations that Cigna had agreed to pay the Hospitals at the "usual and customary rate" by the conduct of failing to arrange for its insured member to be transferred after being notified by the Hospitals of the insured members' admissions and being requested to either provide authorization or arrange prompt transfer to another facility. Therefore, under a 91a review or that of a plea to the jurisdiction that challenges only the sufficiency of a petition's allegations, we conclude dismissal on this ground was error. *See Molina*, 620 S.W.3d at 463; *In re RNDC Tex., LLC*, 2018 WL 2773262, at *1.

Cigna responds that the Hospitals' claims in their amended petition are barred "as they are anchored within the emergency care statutes" and "originate from emergency care." However, Cigna does not point to any language within the Hospitals' amended petition, nor can we find any, that supports its responsive arguments. Instead, Cigna's responsive arguments rely on the evidence it offered as part of its reply in support of its second plea.

Accordingly, we next consider whether Cigna satisfied its burden to provide summary judgment proof of the applicability of the emergency care sections of the Insurance Code and, if so, whether any relevant evidence is undisputed or the Hospitals failed to raise a fact question. *See Garcia*, 372 S.W.3d at 635. And, as the pleader–defendant, Cigna had the burden to meet the summary judgment proof

standard for its assertion that the Hospitals' claims were barred by the emergency care sections of the Insurance Code. *See id.* For a defendant to prevail on a traditional motion for summary judgment, he must either disprove at least one element of the plaintiff's claim as a matter of law or conclusively establish all elements of an affirmative defense. *Woodhaven Partners, Ltd. v. Shamoun & Norman, L.L.P.*, 422 S.W.3d 821, 831 (Tex. App.—Dallas 2014, no pet.) (citing *Friendswood Dev. Co. v. McDade & Co.*, 926 S.W.2d 280, 282 (Tex. 1996), and *Kalyanaram v. Univ. of Tex. Sys.*, 230 S.W.3d 921, 925 (Tex. App.—Dallas 2007, pet. denied)). If the movant meets its burden, then and only then must the non-movant respond and present evidence raising a fact issue. *Id.* (citing *Rhone–Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 222–23 (Tex. 1999)).

Cigna did not offer any evidence in support of its second plea to the jurisdiction until filing its reply in support of same. That evidence consisted of a single notice referring to a single claim for reimbursement for one patient despite the fact that both parties agree that there is no overarching contract between them governing all the claims and that instead any agreement that might exist would be on a claim-by-claim basis.[2] We cannot conclude that such evidence of a single

[2] The Hospitals cite authority for a general rule that separate instruments or contracts executed at the same time, for the same purpose, and in the same course of the same transaction are to be considered as one instrument and construed together, but even so, they argue multiple "contractual agreements" exist between the parties. *Cf. In re Houston Progressive Radiology Assocs., PLLC*, 474 S.W.3d 435, 443–44 (Tex. App.—Houston [1st Dist.] 2015, no pet.) ("The general rule is that separate instruments or contracts executed at the same time, for the same purpose, and in the course of the same transaction are to be considered as one instrument and are to be read and construed together.") (citing *Jones v. Kelley*, 614 S.W.2d 95, 98 (Tex.

agreement would be sufficient under traditional summary-judgment standards to bar all of the claims and thus cannot conclude it is sufficient here.[3] *See Garcia*, 372 S.W.3d at 635; *Woodhaven Partners*, 422 S.W.3d at 831.

Accordingly, we conclude the trial court erred by granting Cigna's second plea to the jurisdiction on the ground that the Hospitals' claims are barred as assertions of a private right of action under the Insurance Code.

We sustain the Hospitals' first issue.

II. Remaining Challenges to the Hospitals' Claims in Cigna's Plea to the Jurisdiction

In its second plea to the jurisdiction, Cigna raised arguments other than that the Hospitals' claims are barred by the Insurance Code, and in their second, third, and fourth issues, the Hospitals argue the trial court erred in granting the plea on the ground it lacks subject matter jurisdiction to resolve the Hospitals' breach of express contract, breach of implied contract, and promissory estoppel claims or their claims for attorney's fees.

As both parties concede, and as discussed above, the Supreme Court stated that the issue of whether the Insurance code creates a private damages action for

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1981), and *Harris v. Rowe*, 593 S.W.2d 303, 306 (Tex. 1979) ("Separate instruments contemporaneously executed as a part of the same transaction and relating to the same subject matter may be construed together as a single instrument.")). We note that the Hospitals' claims are for treatment of "hundreds of Cigna patients" for the period of September 2018 through December 31, 2021, which at least suggests any agreements made by the parties were entered into at different times rather than at the same time.

[3] In light of this conclusion, we need not address the Hospitals' argument regarding whether the evidence was timely offered as part of Cigna's reply in support of its second plea instead of with the second plea. *See* TEX. R. APP. P. 47.1.

claims under the emergency care sections does not implicate constitutional standing and is instead a merits issue properly raised in a motion for summary judgment or Rule 91a motion to dismiss, rather than a plea to the jurisdiction. *See Molina*, 659 S.W.3d at 441. The remaining grounds argued by Cigna in its second plea were whether the Hospitals' amended petition alleged any agreement to pay existed between the parties to support the claim for breach of express contract, whether the statute of frauds barred any of the Hospitals' claims, whether the applicable statute of limitations barred any of the Hospitals' claims, and whether the Hospitals alleged a sufficiently definite agreement to support the claim for breach of implied contract.[4] Therefore, the remaining grounds raised two affirmative defenses and specially excepted to the Hospitals' amended petition. *See* TEX. R. CIV. P. 94 (listing statute of frauds and statute of limitations as affirmative defenses); TEX. R. CIV. P. 91 (special exceptions); *J.G. v. Jones*, 660 S.W.3d 786, 789 (Tex. App.—Dallas 2023, pet. denied) ("The purpose of a special exception is to compel clarification of pleadings when the pleadings are not sufficiently specific or fail to plead a cause of action.").

Per rule 71, when a party has mistakenly designated any plea or pleading, the court, if justice so requires, shall treat the plea or pleading as if it has been properly

[4] Cigna's challenge in its second plea to the Hospitals' claims for promissory estoppel that the Hospitals lacked standing to assert same because their claims were "repackaged" claims for emergency care reimbursement barred by the Insurance Code. The Hospitals argued these grounds in their fourth issue. We need not address this issue in light of our conclusion that the Hospitals did not allege any claims for reimbursement for emergency care. *See* TEX. R. APP. P. 47.1.

designated. *See* TEX. R. CIV. P. 71. Instead of looking to the title, "[w]e look to the substance of a plea for relief to determine the nature of the pleading." *See Molina*, 659 S.W.3d at 441 (quoting *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980)) (citing *re J.Z.P.*, 484 S.W.3d 924, 925 (Tex. 2016)). In addressing the remaining challenges, we will address the substance of each to determine the nature of the pleading and reviewing the same accordingly.

A. Cigna's Challenge to Sufficiency of Pleading of Hospitals' Claim for Breach of Express Contract and Affirmative Defenses

The Hospitals' second issue argues:

> Whether the Trial Court erred in holding that it lacks subject matter jurisdiction to resolve the Hospitals' breach of express contract claim where the Hospitals agreed to provide non-emergency care or elective services to Cigna's members, Cigna agreed to pay for that care at prescribed rates, and Cigna made only partial payment for that care.

In its challenge to the Hospitals' claim for breach of express contract, Cigna argued that, "[a]s out-of-network providers, it is undisputed that Plaintiffs have no written contract with Cigna setting out an explicit agreed rate or rates for the provision of medical services." Cigna then set forth the elements for a claim for breach of express contract, including a valid contract, and argued no such contract existed based on the amended petition's allegations.

Our procedural rules require pleadings to provide fair notice of the claim and the relief sought such that the opposing party can prepare a defense. *J.G.*, 660 S.W.3d at 789 (citing *Thomas v. 462 Thomas Fam. Props., LP*, 559 S.W.3d 634, 639 (Tex. App.—Dallas 2018, pet. denied)). A petition is sufficient if it gives fair and

adequate notice of the facts upon which the pleader bases her claim. *Id.* (citing *Thomas*, 559 S.W.3d at 639–40). Under this standard, courts assess whether an opposing party can ascertain from the pleading the nature of the controversy, its basic issues, and the type of evidence that might be relevant. *Id.* (citing *Thomas*, 559 S.W.3d at 640.

Special exceptions may be used to challenge the sufficiency of a pleading. *J.G.*, 660 S.W.3d at 790 (citing *Gatten v. McCarley*, 391 S.W.3d 669, 673 (Tex. App.—Dallas 2013, no pet.)). The purpose of a special exception is to compel clarification of pleadings when the pleadings are not sufficiently specific or fail to plead a cause of action. *Id.* (citing *Gatten*, 391 S.W.3d at 673). If a trial court grants special exceptions, the pleader may either amend her petition to cure the defect or stand on the pleadings and test the decision on appeal. *Id.* (citing *Doe v. Univ. of the Incarnate Word*, No. 04-19-00453-CV, 2020 WL 3260080, at *1 (Tex. App.—San Antonio June 17, 2020, no pet.) (mem. op.)).

We review the trial court's decision to dismiss for insufficient pleadings under an abuse-of-discretion standard. *J.G.*, 660 S.W.3d at 789 (citing *Humphreys v. Meadows*, 938 S.W.2d 750, 753 (Tex. App.—Fort Worth 1996, writ denied)). A trial court may not dismiss a plaintiff's case for pleading defects unless an opportunity is first afforded to amend and cure the defect. *Id.* (citing *Tex. Dep't of Corr. v. Herring*, 513 S.W.2d 6, 9–10 (Tex. 1974); *Humphreys*, 938 S.W.2d at 753); and *Zaremba v. Cliburn*, 949 S.W.2d 822, 829 (Tex. App.—Fort Worth 1997, writ

denied) (when there is defect in pleadings that cannot be cured by amendment, trial court may dismiss claims without providing opportunity to amend defect). Further, if a plaintiff makes a good faith attempt to amend its petition in response to the granting of special exceptions, the trial court may not dismiss the amended petition unless the defendant files special exceptions to the revised pleadings, the court sustains the new special exceptions, and the court gives the plaintiff the opportunity to amend the revised pleadings. *See id.* at 789–90 (citing *Isbell v. Russell*, No. 13-20-00193-CV, 2022 WL 52590, at *6 (Tex. App.—Corpus Christi–Edinburg Jan. 6, 2022, no pet.) (mem. op.); *Humphreys*, 938 S.W.2d at 753; and *Albright v. Tex. Dep't of Human Servs.*, 859 S.W.2d 575, 582–83 (Tex. App.—Houston [1st Dist.] 1993, no writ)).

The Hospitals' amended petition alleged that they had provided Cigna with "written and/or verbal notices to Cigna requesting that Cigna authorized the Hospitals to provide care to the patients" and that Cigna provided authorizations for each patient's care. From these allegations, we conclude the Hospitals gave Cigna "fair and adequate notice of the facts upon which [the Hospitals] base[d] [their] claim." *See J.G.*, 660 S.W.3d at 789. Thus, we conclude the trial court erred by dismissing the Hospitals' claim for breach of contract on this ground.

As for Cigna's challenges that the Hospitals' claims failed to satisfy the statutes of frauds or limitations, we note that such challenges are affirmative defenses, such that we must construe that portion of Cigna's second plea as a motion

for traditional summary judgment. Cigna provided no evidence in support of this affirmative defense to satisfy its burden. Accordingly, we conclude the trial court erred by dismissing the Hospitals' claim for breach of contract on this ground.

We sustain the Hospitals' second issue.

B. Cigna's Challenge to Sufficiency of Pleading of Hospitals' Claim for Breach of Implied Contract

In their third issue, the Hospitals argue the trial court erred by dismissing their claim for breach of implied contract. Cigna challenged that claim by arguing the Hospitals' amended petition was facially insufficient to give rise to an implied contract, that the petition did not allege sufficiently definite terms to enable to the court to determine the respective legal obligations of the parties. The Hospitals argue Cigna's challenge is not a challenge to whether the petition invokes the trial court's jurisdiction but instead is one that the petition is less than clear such that it should have been amended.

We apply the same fair-notice standard to our review of the pleadings in this issue as the second issue above. *See J.G.*, 660 S.W.3d at 789 (citing *Thomas*, 559 S.W.3d at 639). And, as above, we apply an abuse-of-discretion standard. *See id.*

Cigna challenged the Hospitals' amended petition as "merely alleg[ing] that implied-in-fact contracts arose from the 'acts and conduct and Cigna and the Hospitals' and Cigna authorized the medical treatment conducted and then failed to pay Plaintiffs 'the amounts it promised.'" In its second plea, Cigna argued that in order to support their claim for breach of implied contract, the alleged implied

contract "must have sufficiently definite terms to enable the court to determine the respective legal obligations of the parties."

The difference between implied and express contracts is the "character and manner of proof required to establish them." *McAllen Hosps., L.P. v. Lopez*, 576 S.W.3d 389, 392 (Tex. 2019) (quoting *Haws & Garrett Gen. Contractors, Inc. v. Gorbett Bros. Welding Co.*, 480 S.W.2d 607, 609 (Tex. 1972)). Both express and implied contracts require the element of mutual agreement, "which, in the case of an implied contract, is inferred from the circumstances." *Id*. (quoting *Lopez*, 576 S.W.3d at 392). "The conception is that of a meeting of the minds of the parties as implied from and evidenced by their conduct and course of dealing, . . . the essence of which is consent to be bound." *Id*.

We agree with Cigna that "[a] contract will bind parties 'only if its terms are sufficiently definite to enable a court to understand the parties' obligations.'" However, an implied contract's terms are derived from the acts and conduct of the parties thereto. *See Molina Healthcare of Tex., Inc. v. ACS Primary Care Physicians Sw., PA*, No. 01-21-00727-CV, 2024 WL 3608192, at *8 (Tex. App.—Houston [1st Dist.] Aug. 1, 2024, no pet.) (mem. op.) (citing *Pearl Res. LLC v. Charger Servs., LLC*, 622 S.W.3d 106, 116 (Tex. App.—El Paso 2020, pet. denied), and *Haws & Garrett Gen. Contractors*, 480 S.W.2d at 609).

The Hospitals' amended petition alleged the following:

> 29. The implied-in-fact contracts arose from the acts and conduct of Cigna and the Hospitals, which reflected a mutual intent to contract.
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> 30. Specifically, the Hospitals notified Cigna that Cigna's members needed care, and the Hospitals requested that Cigna authorize the Hospitals to provide that care.
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> 31. On information and belief, in each instance, Cigna responded by providing a written or verbal authorization authorizing the Hospitals to provide such care to Cigna's members and agreeing to pay for that care.
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> 32. The course of conduct between the Hospitals and Cigna demonstrates a meeting of the minds on the terms of their agreement and a mutual intent to contract for the provision of care in exchange for payment.
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> 33. The Hospitals fully performed all of their obligations under the parties' implied-in-fact contracts by providing care to Cigna's members.
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> 34. Cigna breached its obligations in each instance by refusing to pay the Hospitals the amounts it promised to pay for the care the Hospitals provided to Cigna's members.
>
> 35. The Hospitals were damaged as a result of Cigna's breaches of the parties' contracts in an amount to be proved at trial.

Thus, the amended petition identified specific acts and conduct the Hospitals alleged created constituted the mutual assent and terms of the alleged implied contracts between the Hospitals and Cigna. Therefore, we conclude the trial court erred by dismissing the Hospitals' claim for breach of implied contract.

We sustain the Hospitals' third issue.

C. Cigna's Challenge to the Hospitals' Claim for Attorney's Fees

In their fifth issue, the Hospitals assert the trial court erred in holding it lacks subject matter jurisdiction to resolve the Hospitals' claim for attorney's fees. The

Hospitals argue they had standing to seek attorney's fees based on their claims for breach of express and implied contracts.

The Hospitals' amended petition sought to recover attorney's fees pursuant to section 38.001(8) of the Texas Civil Practice and Remedies Code, which provides that a person may recover attorney's fees for a claim for an oral or written contract. *See* TEX. CIV. & PRAC. REM. CODE § 38.001(8). In its second plea, Cigna urged, based on its arguments related to the Insurance Code, that the Hospitals lacked standing for their underlying claims and therefore also lacked standing to enforce statutory remedies for attorney's fees pursuant to section 38.001(8).

As discussed above, the Supreme Court stated that the issue related to whether the Hospitals' private action against Cigna was barred by the Insurance Code was not an issue of standing but of merits. *See Molina*, 659 S.W.3d at 441. Further, we have already concluded that any such bar is inapplicable based on the Hospitals' amended petition and the limited evidence proffered by Cigna. Accordingly, we sustain this issue and overrule the trial court's dismissal of the Hospitals' claims for attorney's fees.

III. No Error in Dismissing with Prejudice

In their sixth issue, the Hospitals contend the trial court erred by granting Cigna's plea and dismissing the Hospitals' claims with prejudice without giving them an opportunity to replead. Based on our conclusions above that the trial court

erred by dismissing the Hospitals' claims, we need not address this issue. *See* TEX. R. APP. P. 47.1.

CONCLUSION

Based on our conclusions above, we reverse the trial court's order and remand the Hospitals' claims to the trial court for further proceedings consistent with this opinion.

/Nancy Kennedy/
NANCY KENNEDY
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DALLAS MEDICAL CENTER, LLC (D/B/A DALLAS MEDICAL CENTER), PRIME HEALTHCARE SERVICES - MESQUITE, LLC (D/B/A DALLAS REGIONAL MEDICAL CENTER), AND KNAPP MEDICAL CENTER, Appellants

No. 05-24-00679-CV V.

CIGNA HEALTHCARE OF TEXAS, INC., CIGNA HEALTH AND LIFE INSURANCE COMPANY, AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Appellees

On Appeal from the 14th Judicial District Court, Dallas County, Texas Trial Court Cause No. DC-23-01762. Opinion delivered by Justice Kennedy. Justices Barbare and Jackson participating.

In accordance with this Court's opinion of this date, we **REVERSE** the trial court's March 6, 2024 Order Granting Cigna's Second Plea to the Jurisdiction and **REMAND** this case to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellants DALLAS MEDICAL CENTER, LLC (D/B/A DALLAS MEDICAL CENTER), PRIME HEALTHCARE SERVICES - MESQUITE, LLC (D/B/A DALLAS REGIONAL MEDICAL CENTER), AND KNAPP MEDICAL CENTER recover their costs of this appeal from appellees CIGNA HEALTHCARE OF TEXAS, INC., CIGNA HEALTH AND LIFE

INSURANCE COMPANY, AND CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

Judgment entered this 2nd day of December 2025.