

COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

Stuart Gignilliat and Kasey Gignilliat v. American Economy Insurance Company, Fertility Institute of New Orleans, Ovation Fertility, and Texas Fertility Center

Gignilliat · No. 2025-CA-0593 · Decided March 20, 2026

SUMMARY

The Louisiana Fourth Circuit Court of Appeal reversed a summary judgment dismissing claims by Stuart and Kasey Gignilliat and cross claims by Ovation against Fertility Institute of New Orleans. The court held that the pleadings were not narrowed to the loss of a single embryo in 2017 and that an ambiguous statement by plaintiffs’ counsel did not constitute a judicial confession limiting the claims. The court further concluded that genuine issues of material fact existed concerning the handling of embryos, FDA-related compliance failures, causation, disclosure, and the parties’ respective responsibilities.

CASE DETAILS

COURT	Court of Appeal of Louisiana, Fourth Circuit
WRITING FOR THE COURT	Joy Cossich Lobrano; Tiffany Gautier Chase; Monique G. Morial
JURISDICTION	Louisiana Court of Appeal, Fourth Circuit
DECIDED	March 20, 2026
DOCKET	2025-CA-0593
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Ovation appealed the district court's judgment granting Fertility Institute of New Orleans's motion for summary judgment and dismissing with prejudice the plaintiffs' claims and Ovation's cross claims against FINO.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same criteria applied by the district court. Summary judgment is proper only when the record shows no genuine issue of material fact and the mover is entitled to judgment as a matter of law; courts may not weigh evidence, determine credibility, or choose among competing reasonable inferences.
PRECEDENTIAL VALUE	Published appellate opinion

PARTIES

FPG Services, LLC d/b/a Ovation Fertility, FPG Labs, LLC d/b/a
Ovation Fertility v. Fertility Institute of New Orleans

TOPICS

summary judgment

pleadings

standard of review

comparative fault

negligence

PRACTICE AREAS

civil procedure

appellate procedure

torts

health law

QUESTIONS PRESENTED

1. Whether the plaintiffs' petition and written adoption of Ovation's opposition preserved negligence claims concerning all of their embryos, rather than limiting the case to the alleged loss of one embryo in March 2017.
2. Whether the oral statement by plaintiffs' counsel at the summary-judgment hearing constituted a judicial confession narrowing the plaintiffs' claims.
3. Whether a statement by plaintiffs' counsel could extinguish Ovation's separately pleaded cross claims against FINO.
4. Whether genuine issues of material fact concerning FINO's handling of the first six embryos, disclosure of regulatory options, the chain of custody, causation, and comparative fault precluded summary judgment.

HOLDINGS

1. The plaintiffs' petition remained the operative pleading and asserted negligence claims concerning the handling and safeguarding of all of their embryos, not merely the single embryo associated with the March 2017 thaw.
2. The ambiguous oral statement by plaintiffs' counsel did not constitute a judicial confession that retroactively narrowed or abandoned claims stated in the petition.
3. Even if plaintiffs' counsel had made a valid judicial confession, it could not extinguish Ovation's independently asserted cross claims against FINO.
4. Summary judgment for FINO was improper because genuine issues of material fact existed concerning FINO's handling of the first six embryos, disclosure of regulatory options, the point at which the 2017 embryo was lost, causation, and comparative fault.

KEY QUOTATIONS

“To have that effect, the statement must be an express, unequivocal admission of an adverse fact, made with intent to bind the party as to the subject of the admission.” (8)

“This is not a loss that manifested through physical destruction or mishandling in the laboratory. It is an administrative loss, one caused by the failure to test before fertilization and the failure to pursue an available

regulatory exemption afterward that effectively removed six embryos from Plaintiffs' reproductive options without their full and informed participation.” (15)

“Where there is competing expert testimony about the chain of custody and unresolved questions about the adequacy of documentation and adherence to proper protocols at multiple stages, determining what occurred and making necessary witness credibility determinations are the hallmark functions of the factfinder and cannot be resolved on summary judgment.” (18)

FACTUAL BACKGROUND

The Gignilliat's sought in vitro fertilization and surrogacy services from FINO. FINO cryopreserved six embryos without conducting FDA-required infectious-disease screening, rendering them ineligible for transfer to a gestational surrogate absent further regulatory action, and later created and transferred additional embryos. After the embryos were transferred to Ovation, an embryo believed to be available for transfer could not be found when a Cryotip was thawed in 2017. The record contained competing expert testimony concerning whether the embryo was lost through FINO's handling, packaging, documentation, or transport, or during Ovation's thawing process.

PROCEDURAL HISTORY

The Gignilliat's filed suit in the Civil District Court for Orleans Parish alleging negligence by FINO and Ovation in handling their embryos. FINO moved for summary judgment after discovery. The district court treated an oral statement by plaintiffs' counsel at the summary-judgment hearing as limiting the plaintiffs' claims to the alleged loss of one embryo in March 2017, then granted FINO's motion and dismissed the plaintiffs' claims and Ovation's cross claims with prejudice. Ovation timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter is remanded to the district court for trial on the merits and further proceedings consistent with the opinion.

CASES CITED

- Bayer v. Starr Int'l Corp., 17-0948, p. 3 (La. App. 4 Cir. 5/2/18), 246 So. 3d 46, 49
- Ducote v. Boleware, 15-0764, p. 6 (La. App. 4 Cir. 2/17/16), 216 So. 3d 934, 939
- Cutrone v. English Turn Prop. Owners Assoc., Inc., 19-0896, p. 8 (La. App. 4 Cir. 3/4/20), 293 So. 3d 1209, 1215
- Smith v. Our Lady of the Lake Hosp., Inc., 93-2512, p. 27 (La. 7/5/94), 639 So. 2d 730, 751
- Federal Work Ready, Inc. v. Wright, 19-0752, p. 16 (La. App. 4 Cir. 4/22/20), 299 So. 3d 140, 149-50
- Cichillo v. Avondale Industries, Inc., 04-2894, p. 6 (La. 11/29/05), 917 So. 2d 424, 428-29
- McCrea v. Mobil Oil Corp., 95-0537 (La. App. 4 Cir. 9/28/95), 662 So. 2d 143

- Malta v. Herbert S. Hiller Corp., 20-0250, p. 16 (La. App. 4 Cir. 11/25/20), 365 So. 3d 123, 135
- Palazzo v. Baker, 94-1244, p. 6 (La. App. 4 Cir. 1/31/95), 652 So. 2d 10, 13
- Williams v. City of New Orleans, 93-2043 (La. App. 4 Cir. 5/17/94), 637 So. 2d 1130, 1132
- Guilbeau v. Liberty Mut. Fire Ins. Co., 18-230, p. 13 (La. App. 3 Cir. 3/7/19), 269 So. 3d 1002, 1010
- Thomas v. BNSF Ry. Co., 23-1209, p. 7 (La. App. 1 Cir. 8/21/25), 420 So. 3d 732, 739-40
- Nowell v. State Farm Mut. Auto. Ins. Co., 576 So. 2d 77, 82 (La. App. 2 Cir. 1991)

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