

SUPREME COURT OF LOUISIANA

Richard Dupuy and His Wife, Melissa Dupuy v. NMC Operating Company, L.L.C. d/b/a The Spine Hospital of Louisiana, Formerly, The Neuromedical Center Hospital

187 So. 3d 436 (La. 2016) · No. 2015-CC-1754 · Decided March 15, 2016

SUMMARY

The Supreme Court of Louisiana held that plaintiffs’ claims alleging a hospital failed to properly maintain and service equipment used to sterilize surgical instruments fell within the Louisiana Medical Malpractice Act. Because the claims had not first been presented to a medical review panel, the hospital’s exception of prematurity should have been granted in its entirety. The court reversed the district court’s ruling.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Justice Crichton
JURISDICTION	Louisiana
DECIDED	March 15, 2016
DOCKET	2015-CC-1754
DISPOSITION	reversed
PROCEDURAL POSTURE	The Hospital sought supervisory review of the district court's partial denial of its second exception of prematurity. The Louisiana Supreme Court granted the writ and reviewed whether the plaintiffs' sterilization-equipment allegations were claims subject to the Louisiana Medical Malpractice Act's medical-review-panel requirement.
STANDARD OF REVIEW	On an exception of prematurity, the court determines whether the cause of action has matured to the point of being ripe for judicial determination. When no evidence is introduced, the exception is decided from the allegations of the petition, which are accepted as true. The allegations are analyzed under the Coleman factors to determine whether they sound in medical malpractice.
PRECEDENTIAL VALUE	binding

PARTIES

NMC Operating Company, L.L.C. d/b/a The Spine Hospital of Louisiana, Formerly, The Neuromedical Center Hospital v. Richard Dupuy, Melissa Dupuy

TOPICS

medical malpractice

health law

civil procedure

statutory interpretation

appellate procedure

PRACTICE AREAS

medical malpractice

health law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether claims alleging that a hospital failed to properly maintain and service equipment used to sterilize surgical instruments constitute medical malpractice under the Louisiana Medical Malpractice Act.
2. Whether the Hospital's exception of prematurity should have been granted in its entirety because the claims had not first been submitted to a medical review panel.
3. Whether the MMA applies when the alleged maintenance failure occurred before the patient's treatment or may have been performed by hospital plant-operations personnel rather than physicians.

HOLDINGS

1. Claims that a qualified hospital failed to properly maintain and service equipment used to sterilize surgical instruments fall within the Louisiana Medical Malpractice Act.
2. Because the sterilization-equipment allegations constituted medical malpractice against a qualified health care provider, the claims were premature unless first submitted to a medical review panel.
3. The alleged maintenance failure need not be contemporaneous with the patient's treatment or performed directly by a physician to fall within the MMA.

KEY QUOTATIONS

“While we do not attempt to supply a universal definition of treatment, we do hold that it does include the furnishing of a clean and sterile environment for all patients.” (slip op. at 7)

“For the reasons set forth above, we hold that the plaintiffs’ claims that the Hospital failed to properly maintain and service equipment used in the sterilization of surgical instruments falls within the Louisiana Medical Malpractice Act.” (slip op. at 14)

FACTUAL BACKGROUND

Richard Dupuy developed a postoperative infection, osteomyelitis, following spine surgery at the Hospital; the infecting organism was identified as mycobacterium fortuitum. The plaintiffs alleged that the Hospital failed to sterilize or clean surgical instruments and, in an amended petition, failed to properly maintain and service washers and sterilizers used in the sterilization process. Medical testimony could not identify the precise source

of the infection, although an instrument or other material used during surgery was considered the most likely source.

PROCEDURAL HISTORY

The plaintiffs sued the Hospital for injuries allegedly resulting from a postoperative infection after spine surgery. The district court sustained the Hospital's exception of prematurity as to the original petition but denied it in part as to the allegation that the Hospital failed to maintain and service sterilization equipment. The Louisiana Court of Appeal, First Circuit, denied the Hospital's writ without comment. The Louisiana Supreme Court granted supervisory review and reversed, holding that the remaining allegation fell within the MMA and that the exception should have been granted in its entirety.

DISPOSITION

reversed

CASES CITED

- *Williamson v. Hospital Service District No. 1 of Jefferson*, 04-0451 (La. 12/1/04), 888 So. 2d 782
- *Spradlin v. Acadia-St. Landry Medical Foundation*, 98-1977 (La. 2/29/00), 758 So. 2d 116
- *Blevins v. Hamilton Medical Center, Inc.*, 07-0127 (La. 6/19/07), 959 So. 2d 440
- *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So. 2d 303
- *Cashio v. Baton Rouge General Hospital*, 378 So. 2d 182 (La. App. 1st Cir. 1979)
- *McBride v. Earl K. Long Memorial Hospital*, 507 So. 2d 821 (La. 1987)
- *Taylor v. Ochsner Clinic Foundation*, Civ. Nos. 11-1926, 11-2221, 2011 WL 6140885 (E.D. La. Dec. 9, 2011)
- *Richard v. Louisiana Extended Care Centers, Inc.*, 02-0978 (La. 1/14/03), 835 So. 2d 460
- *Todd v. Angeloz*, 2002-1400 (La. App. 1 Cir. 3/28/03), 844 So. 2d 316
- *LaCoste v. Pendleton Methodist Hospital, L.L.C.*, 07-0008 (La. 9/5/07), 966 So. 2d 519
- *Flood v. Pendleton Memorial Methodist Hospital*, 02-0440 (La. App. 4 Cir. 7/17/02), 823 So. 2d 1002, writ denied, 02-2206 (La. 11/8/02), 828 So. 2d 1121
- *Andre v. Binder*, 1999-1952 (La. App. 1 Cir. 2/18/00), 753 So. 2d 397
- *B.W.S., Jr. v. Livingston Parish School Board*, 06-1981 (La. 8/16/06), 936 So. 2d 181
- *Stoughton v. Borgess Medical Center*, No. 242781, 2003 WL 22800971 (Mich. App. Nov. 25, 2003)
- *Dupuy v. NMC Operating Co., L.L.C. d/b/a The Spine Hospital of Louisiana*, 2015-1754 (La. 10/30/15), 2015 WL 7721788