ALISON JIMENEZ, ET AL.

VERSUS

DR. RABIA CATTIE, ET AL.

NO. 25-C-61

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE
TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 852-453, DIVISION "G"
HONORABLE E. ADRIAN ADAMS, JUDGE PRESIDING

July 30, 2025

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Timothy S. Marcel

WRIT GRANTED; JUDGMENT DENYING RELATOR'S EXCEPTION OF PRESCRIPTION VACATED; REMANDED FOR FURTHER PROCEEDINGS.

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WICKER, J.

In this medical malpractice action, Defendant/Relator, Dr. Rabia Cattie, seeks supervisory review of the trial court's denial of her exception of prescription. For the reasons stated below, we conclude that the trial court's ruling, for which no oral or written reasons were given, may have been based on erroneous interpretations of the law and that certain facts material to the prescription issue cannot be determined from the evidence presented at the hearing on the exception. Accordingly, we grant the writ, vacate the trial court's judgment, and remand the matter for further proceedings consistent with this writ disposition.

Factual and Legal Overview

The exception of prescription filed by Dr. Cattie concerns the timeliness of the Petition for Damages ("Petition") filed by Plaintiffs/Respondents, Alison M. Jimenez and Melissa Martin, individually and on behalf of their deceased mother, Brenda Martin ("Mrs. Martin"), in the district court after their claims were reviewed by a medical review panel.[1] Plaintiffs alleged in their petition that Dr. Cattie, who is an oncologist, and East Jefferson General Hospital ("Defendants") committed malpractice in their treatment of Brenda Martin for colon cancer from May 22, 2019, when she began chemotherapy treatment, until the date of her death on June 25, 2019.

Plaintiffs alleged that Mrs. Martin suffered an untimely death and unnecessary, intense pain and suffering as a result of the malpractice. They asserted wrongful death and survival claims for the damages she suffered before her death as well as the damages they suffered as a result of her death. This is the second of two exceptions of prescription filed in distinct phases of the medical

[1] It appears from the writ application that Dr. Cattie's co-defendant, Jefferson Hospital Service District No. 2 d/b/a/ East Jefferson General Hospital, has filed a separate exception of prescription in the trial court, and that it had not been heard as of the time this writ application was filed. Only Dr. Cattie's exception is presently before us.

malpractice litigation arising out of Mrs. Martin's cancer, treatment therefor, and death.

The issues presented in this writ application touch upon a number of different substantive and procedural complexities, as well as nuanced legal doctrines, bearing on the prescription exception, including (i) the necessary steps for completion of the filing of a medical malpractice complaint with the Patient's Compensation Fund during the administrative phase of medical malpractice litigation ("the medical review panel phase"), (ii) the breadth of COVID-19 pandemic and Hurricane Laura emergency Governor's orders and statutes suspending prescriptive and peremptive periods in 2020, (iii) the application of the doctrine of *contra non valentem* in causes of action arising out of medical malpractice, and (iv) the "Law of the Case" Doctrine. Because these matters may all be of consequence to the analysis of the prescription issues before the court, they will each be discussed in turn.

Medical malpractice claims, including survival claims asserted on behalf of a deceased patient, must be filed within one year of the date of the alleged act of malpractice or within one year of the date of discovery of the alleged malpractice, but no more than three years after the date of the alleged malpractice. La. R.S. 9:5628.

If the health care provider is covered by the Louisiana Medical Malpractice Act ("LMMA"), La. R.S. 40:1231.1, *et seq.*, as the defendants in this case were, such claims must first be submitted to a medical review panel before suit can be filed. La. R.S. 40:1231.8(A)(1)(a). The filing of a request for review of a malpractice claim suspends the time within which suit must be instituted until ninety days following notification by certified mail to the claimant or his or her

attorney of the issuance of the opinion by the medical review panel. § 1231.8(A)(2)(a).[2]

During the medical review panel phase of medical malpractice litigation, a party may file a separate petition in the district court in order to engage in discovery and motion practice. § 1231.8(B)(2)(a), (D)(4). This is a preliminary action distinct from the ultimate petition filed following the completion of the medical review panel phase, in order to pursue the case on its merits.

Although wrongful death claims arising from medical malpractice are procedurally governed by the LMMA, the prescriptive periods set forth in La. R.S. 9:5628 do not apply to such claims. *Taylor v. Giddens*, 618 So.2d 834, 841 (La. 1993). Instead, those claims are generally governed by the prescriptive period set forth in La. C.C. Art. 2315.2(B), which, at the time of Mrs. Martin's death, was one year from the date of death. *Id.*; La. C.C. art. 2315.2(B), prior to its amendment by Acts 2025, No. 176. As discussed herein, however, the Louisiana Supreme Court has now clarified that the doctrine of *contra non valentem* may operate to extend the prescriptive period for a wrongful death claim arising out of medical malpractice. *Medical Review Panel for Bush*, 21-954 (La. 5/13/22), 339 So.3d 1118.

For many years, there were conflicting decisions in the case law as to whether the prescriptive period for a medical malpractice wrongful death action may begin after the date of death, under the doctrine of *contra non valentem*, based on the plaintiff's delayed discovery of a potential malpractice claim. In 2022, the

[2] When this ninety-day period expires, the period of suspension that began when the medical malpractice claim was submitted for review by a medical review panel ends, and prescription begins to run again from the point at which the suspension period began. *Guitreau v. Kucharchuk*, 99-2570 (La. 5/16/00), 763 So.2d 575, 579. If any part of the initial prescriptive period was unused when the suspension period began, plaintiffs are entitled to that unused time, in addition to the ninety-day period, before suit must be filed. *Id.* at 579, 581. In certain circumstances, other suspensions of prescription that would extend the time for filing suit, such as those relating to public health or weather emergencies, may also apply.

Louisiana Supreme Court resolved the conflict by recognizing that under certain circumstances, the prescriptive period for such claims may begin after the date of death if the plaintiff establishes that he or she did not know or have reason to know that the death may have been caused by malpractice until a later date. *Id.* at 1123, 1125. In that case, the Supreme Court found that the appellate court correctly set forth the law permitting consideration of the doctrine of *contra non valentem* in medical malpractice wrongful death actions in its opinion but reversed that court's decision on other grounds.[3]

When an exception of prescription is filed during the medical review panel stage of the proceedings, the request for a medical review panel (sometimes called a medical malpractice complaint) is considered the petition to be reviewed for timeliness. *In re Medical Review Panel for Crane*, 20-259 (La. App. 5 Cir. 4/22/21), 347 So.3d 979, 984, *writ denied*, 21-707 (La. 9/27/21), 324 So.3d 95.

When a prescription exception is pleaded before trial, evidence may be introduced to support or controvert the exception. *Id.*; La. C.C.P. art. 931.

The exceptor generally bears the burden of proof at the trial of the prescription exception. However, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show that the action has not prescribed. *Crane*, 347 So.3d at 984.

A medical malpractice complaint or petition alleging delayed discovery of medical malpractice is not prescribed on its face if it is filed within one year of the date of discovery of the alleged act of malpractice and it alleges with particularity (i) the act of alleged malpractice, (ii) the date it was discovered, (iii) that plaintiffs

[3] The appellate court's analysis of the conflicting case law on that issue appears in *Medical Review Panel for Bush*, 20-468 (La. App. 4 Cir. 6/2/21), 369 So.3d 399, 409-413. In the *Bush* case, the Supreme Court reversed the Fourth Circuit's ruling in the plaintiffs' favor because the appellate court had considered documents pertaining to the delayed discovery issue that were not introduced into evidence. 339 So.3d at 1124-25.

were unaware of the malpractice before the alleged date of discovery, and (iv) that plaintiffs' delay in discovering the malpractice was reasonable. *In re Medical Review Panel of Heath*, 21-1367 (La. 6/29/22), 345 So.3d 992, 996-97, citing *Campo v. Correa*, 01-2707 (La. 6/21/02), 828 So.2d 502, 509.

If the plaintiffs' allegations do not meet those requirements, the complaint or petition is deemed prescribed on its face, and the burden shifts to the plaintiff to prove that the action has not prescribed. *Heath*, 345 So.3d at 996-97. This shifting of the burden of proof does not preclude the plaintiff from introducing evidence of delayed discovery of malpractice at the trial of the exception. *See, e.g.*, *Heath*, 345 So.3d at 997-1000. Once the burden shifts, the plaintiffs must prove that they discovered the potential malpractice less than one year before suit was filed and that the delay in discovery was reasonable. *Id.* at 997-98.

As further explained in *Heath*, in cases involving claims of delayed discovery of malpractice, prescription begins running when the plaintiff obtains actual or constructive knowledge of facts indicating to a reasonable person that he or she is the victim of a tort. Constructive knowledge is whatever notice is enough to excite attention and put the injured person on guard and call for inquiry. A plaintiff with constructive knowledge is imputed with whatever knowledge a reasonable inquiry or investigation would reveal. *Id.* at 996, citing *Campo*, 828 So.2d at 510-11.

Proceedings for Review of Claims by Medical Review Panel

First Complaint

Before filing the Petition, Plaintiffs presented their malpractice claims against Dr. Cattie and the hospital to the Louisiana Division of Administration ("DOA") for review by a medical review panel, as required by law, in two requests for review. Their first request ("First Complaint") was submitted to the DOA on June 17, 2020, within one year of the date of Mrs. Martin's death (the last date on

which malpractice was alleged to have occurred).[4] In the First Complaint, Plaintiffs alleged, among other things, that Mrs. Martin had experienced a toxic reaction to the chemotherapy drug she began receiving on May 22, 2019, and stated that "[s]ometime after [her] death on June 25, 2019, her family began to inquire about what may have caused the chemo toxicity and are still collecting medical records to find answers."

Second Complaint

Plaintiffs' second request for a medical review panel ("Second Complaint") indicates that it was sent to the DOA by certified mail. It is dated September 24, 2020, and was received by the DOA on October 5, 2020, but it is deemed filed on the date of mailing, which the parties appear to agree was October 2, 2020. This date is more than one year after the date of Mrs. Martin's death.

In the Second Complaint, Plaintiffs asserted the same malpractice claims against Dr. Cattie and the hospital that they had presented in the First Complaint. They stated that they were unaware any malpractice had been committed "until October of 2019, after a family friend and doctor reviewed Mrs. Martin's medical records." They also stated that prescription was not an issue due to the suspensions of prescription in effect in 2020 as a result of the COVID-19 pandemic and Hurricane Laura.

Plaintiffs filed the Second Complaint after receiving a letter from the Patient's Compensation Fund ("PCF") on behalf of the DOA, dated September 3, 2020, stating that the PCF had advised them on June 29, 2020, that they had 45 days to remit a $200 filing fee or other documents described in the letter that would

[4] The First Complaint was sent to the DOA by fax on June 17, 2019. Pursuant to La. R.S. 40:1231.8(A)(2)(b)(i), a request for review of a malpractice claim is deemed filed on one of three dates: (1) the date that it is sent to the DOA, if it is sent electronically by facsimile transmission or other authorized means; (2) the date it is mailed, if it is delivered to the DOA by certified or registered mail; or (3) the date it is received by the DOA, if it is delivered by any other means.

allow the fee to be waived, and that the failure to comply with these provisions would render their request for review invalid and without effect.[5] The September letter further stated that the PCF did not receive the filing fees due within the time allowed and that "the above cited case is considered invalid and without effect."

The 45-day period to pay the filing fee runs from the date of the claimant's receipt of the PCF's confirmation of its receipt of the request for review of a malpractice claim. La. R.S. 40:1231.8(A)(1)(c).[6]

The filing of the request for review and the payment of the filing fee are inexorably joined, such that the request for review is not considered to be filed until the claimant pays the filing fee. *Crane*, 347 So.3d at 984. Failure to pay the fee timely "shall render the request for review of a malpractice claim invalid and without effect. Such an invalid request . . . shall not suspend time within which suit must be instituted" after the panel's review of the claim. § 1231.8(A)(1)(e).

Discovery Proceeding and Panel Opinion

While the Second Complaint was pending before the medical review panel, Dr. Cattie filed a proceeding in the 24th Judicial District Court to initiate discovery, as permitted by La. R.S. 40:1231.8(D)(4) (the "Discovery Proceeding").[7]

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[5] The filing fee is case-specific and is based on the number of named defendants who are qualified health care providers under the LMMA. § 1231.8(A)(1)(c).

[6] As discussed below, the confirmation letter must be sent by certified mail, return receipt requested, and the date of receipt can be proven by the certified mail receipt or green card or by tracking information from the U.S. Postal Service.

[7] 24th JDC No. 813-383. La. R.S. 40:1231.8 states: "Upon request of any party, or upon request of any two panel members, the clerk of any district court shall issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence for inspection and/or copying." Subsection (B)(2)(a) of the statute permits a health care provider against whom a claim has been filed under the LMMA to assert an exception of prescription pursuant to La. R.S. 9:5628 in court while the administrative review process is pending.

The First Exception of Prescription

In February 2021, Dr. Cattie filed an exception of prescription in the Discovery Proceeding (the "First Exception") asserting that Plaintiffs' First Complaint was invalid due to their failure to timely pay the filing fee and that the claims asserted in Second Complaint were prescribed because it was filed more than one year after the date of Mrs. Martin's death (the last date on which malpractice was alleged to have occurred), and no valid legal basis for suspending prescription had been shown.

In opposition to the exception, Plaintiffs asserted that the fee for the First Complaint was paid timely and that the Second Complaint was also timely based on various statewide suspensions of prescriptive periods that were in effect in 2020 due to the COVID-19 pandemic and Hurricane Laura, among other things.

On May 3, 2021, the trial court in the Discovery Proceeding held a hearing on Dr. Cattie's prescription exception (the "First Hearing"). The parties on both sides introduced evidence in support of their respective positions. The court denied the exception at the close of the hearing and issued written Reasons for Judgment at Dr. Cattie's request.

In its Reasons for Judgment, the trial court stated that the First Complaint "was dismissed" for failure to pay the required fees.[8] The court concluded that the Second Complaint was timely based on its interpretation of the governor's emergency proclamations and the statutes which suspended prescriptive periods due to the pandemic. Those provisions are discussed in more detail below.

[8] There is no indication in the PCF's September 3, 2020 letter to Plaintiffs, or in any other evidence presented at the First Hearing, that the PCF dismissed the First Complaint. In that letter, the PCF stated that it had not received the filing fee within the time specified in its June 29, 2020 letter and that the case "is considered invalid and without effect." The PCF is statutorily authorized to issue such a notice pursuant to §§ 1231.8(A)(1)(e) and (A)(4), but it does not have the authority to dismiss a medical malpractice claim. *Golden v. Patient's Compensation Fund Oversight Bd.*, 40,801 (La. App. 2 Cir. 3/8/06), 924 So.2d 459, 463-64, *writ denied*, 06-837 (La. 6/2/06), 929 So.2d 1261.

The trial court found that Plaintiffs had notice of a potential malpractice claim on the date of Mrs. Martin's death, June 25, 2019, and that the prescriptive period for submitting a request for a medical review panel would have expired one year later, on June 25, 2020, but for the pandemic-related suspensions. The court further found that prescription was suspended for 110 days after that date, or until roughly mid-October 2020, rather than until July 6, 2020, as Dr. Cattie claimed. Using October 5, 2020, as the filing date for the Second Complaint (the date of the DOA's receipt of it), the court concluded that it was timely.

Neither Dr. Cattie nor Plaintiffs sought supervisory review of that ruling.

On August 30, 2023, the medical review panel issued its Opinion and Reasons. The panel opined that the evidence did not support the conclusion that either Dr. Cattie or the hospital breached the standards of care in the care and treatment of Mrs. Martin.[9]

Damage Suit

On March 18, 2024, more than six months after the issuance of the medical review panel's opinion, Plaintiffs filed their Petition for Damages in the instant lawsuit, which was assigned a new case number and allotted to a different division than the division where the prescription exception in the Discovery Proceeding was heard.[10]

The allegations in the Petition are generally similar to those contained in the First and Second Complaints, with some differences in the allegations concerning the specific acts of negligence allegedly committed by the Defendants. Plaintiffs

[9] It is unclear from this writ application when Plaintiffs were notified of the panel's decision.

[10] The timeliness of filing of the Damage Suit was not raised as an issue in either of the prescription exceptions referred to in this writ application.

did not allege in the Petition that they did not discover that their mother's death may have been caused by medical malpractice until after the date of her death.

The Second Exception of Prescription

In September 2024, Dr. Cattie filed an exception of prescription in the Damage Suit (the "Second Exception"). She maintained that the First Complaint was invalid due to Plaintiffs' failure to timely pay the required fee and that the claims asserted in the Second Complaint and the Petition were prescribed because the pandemic-related suspensions of prescription ended on July 5, 2020, and the Second Complaint was filed more than two months later. Dr. Cattie asserted that the judge in the Discovery Proceeding erred in calculating when those suspensions ended. In support of her position on that issue, she cited a case that was decided after the First Exception was heard on May 3, 2021.[11]

With respect to the allegations of delayed discovery of malpractice in the Second Complaint, Dr. Cattie claimed that Plaintiffs had not alleged with sufficient particularity why they did not have reason to suspect that malpractice may have occurred before the family friend reviewed their mother's medical records. Dr. Cattie maintained that both the Second Complaint and the Petition were prescribed on their face, shifting the burden of proof to Plaintiffs to prove that their claims were not prescribed.

Plaintiffs opposed the exception on many of the same grounds they had asserted in opposition to the prescription exception in the Discovery Proceeding. They also claimed that the prior ruling denying the exception constituted the law of the case because Dr. Cattie did not seek further review of it, and that the exception could not be relitigated in the Damage Suit.

[11] *Anding o/b/o Anding v. Ferguson*, 54,575 (La. App. 2 Cir. 7/6/22), 342 So.3d 1138.

At the hearing on the Second Exception (the "Second Hearing") in December 2024, both sides introduced into evidence the supporting and opposing documents they had attached to the second exception and the opposition in the Damage Suit, including the transcript of the First Hearing, at which both Plaintiffs testified, the affidavits of both Plaintiffs introduced in evidence at the First Hearing, and the judgment and written reasons for denying the First Exception. Dr. Cattie also cited additional cases supporting her position on when the suspensions affecting the prescriptive period for the Second Complaint ended.

After hearing arguments from both sides on the prescription exception in the Damage Suit, the trial court denied the exception from the bench and signed a judgment denying the exception on January 8, 2025. The court was not asked to, and did not, provide any oral or written reasons for its ruling.

We first address whether the trial court in the Damage Suit was bound by the prior trial court ruling denying Dr. Cattie's prescription exception in the Discovery Proceeding.

Law of the Case Doctrine

The Law of the Case Doctrine is a discretionary jurisprudential guide that precludes reconsideration by an appellate court of its own rulings of law in the same case. *Medical Review Panel Proceedings v. Ochsner Clinic Foundation*, 17-488 (La. App. 5 Cir. 3/14/18), 241 So.3d 1226, 1229, *writ denied*, 18-594 (La. 6/1/18), 244 So.3d 435. In this case, there is no prior ruling by this court on the prescription exception because neither side sought supervisory review of the interlocutory judgment denying the First Exception. Under these circumstances, the Law of the Case Doctrine does not preclude this court's consideration of any of the issues presented in this writ application. *Champagne and Rodgers Realty Co., Inc. v. Henning*, 06-237 (La. App. 5 Cir. 11/14/06), 947 So.2d 39, 46, *writ denied*, 06-2920 (La. 3/9/07), 949 So.2d 440.

The Law of the Case Doctrine may also be applied to preclude a trial court's reconsideration of its prior legal rulings in a case, but it cannot supplant the provisions in the Code of Civil Procedure that allow a party to reurge a peremptory exception of prescription after it has been initially denied by the trial court, particularly when the exceptor presents new evidence or argument to the trial court. La. C.C.P. arts. 927, 928; *Medical Review Panel Proceedings v. Ochsner*, 241 So.3d at 1229; *Eastin v. Entergy Corp.*, 07-212 (La. App. 5 Cir. 10/16/07), 971 So.2d 374, 379, *writ denied*, 07-2214 (La. 1/11/08), 972 So.2d 1167. The doctrine also does not apply in cases of palpable former error or when its application would lead to manifest injustice. *Champagne and Rodgers Realty Co.*, 947 So.2d at 46-47; *Vincent v. Ray Brandt Dodge*, 94-291 (La. App. 5 Cir. 3/1/95), 652 So.2d 84, 85, *writ denied*, 95-1247 (La. 6/30/95), 657 So.2d 1034.

The Law of the Case Doctrine did not preclude the trial court's consideration of Dr. Cattie's second prescription exception for several reasons. A peremptory exception of prescription may be reurged in the trial court at any time prior to submission of the case for a decision. La. C.C.P. art. 928; *Eastin*, 971 So.2d at 379. The Second Exception concerns the timeliness of the Petition for Damages, which had not been filed and was not before the trial court when the First Exception was decided. Dr. Cattie has presented new arguments in support of her position on the exception, including case law decided after the First Exception was heard that demonstrates palpable error in the trial court's calculation of the pandemic-related suspension periods in its ruling on the First Exception.

For all of these reasons, Dr. Cattie was permitted to reurge the prescription exception in the Damage Suit, and the trial court was not bound by the prior ruling on the exception in the Discovery Proceeding.

Calculation of Emergency Related Suspension Periods

As discussed above, Plaintiffs argue and the trial court in the Discovery Proceeding agreed that the Second Complaint was timely filed because the running of liberative prescription was suspended by several executive orders and related statutes enacted during the COVID-19 pandemic. As discussed herein, this is in error.

The provisions concerning suspension of liberative prescription and other legal deadlines due to the COVID-19 pandemic appear in several executive orders or proclamations issued by Governor John Bel Edwards in March–June 2020 and in three statutes passed by the Louisiana Legislature in June 2020 to ratify the governor's actions, La. R.S. 9:5828-5830.

The first executive order, Proclamation Number 25 JBE 2020 ("JBE 2020-25"), was issued on March 11, 2020, and declared a statewide public health emergency as a result of the threat posed by COVID-19, but it did not contain any provisions about suspension of prescription or other legal deadlines. Those provisions appeared for the first time in JBE 2020-30, issued on March 16, 2020, and were included in several subsequent executive orders, including JBE 2020-75, issued on June 4, 2020, and JBE 2020-84, issued on June 25, 2020.[12]

The executive orders suspended, through various dates beginning on March 17, 2020, "[l]iberative prescriptive and peremptive periods applicable to legal proceedings in all courts, administrative agencies, and boards."[13] The last two

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[12] Plaintiffs introduced JBE 2020-75 and JBE 2020-84 in evidence in the trial court. The full text of JBE 2020-30 appears in the notes following La. R.S. 9:5828-5830, as directed by the Legislature when those statutes were enacted. Acts 2020, 1st Ex. Sess, No. 162, Section 4. This court may take judicial notice of the provisions of JBE 2020-25 and any other executive orders pertinent to this writ disposition, as authorized by La. C.E. art. 202(B)(1)(a), even if they were not introduced in evidence. *State v. Spell*, 21-876 (La. 5/13/22), 339 So.3d 1125, 1128 n. 1; *Peralez v. HDI Global Specialty SE*, 22-343 (La. App. 3 Cir. 11/9/22), 353 So.3d 235, 239 n. 2. *writ denied*, 22-1795 (La. 2/14/23), 362 So.3d 424.

[13] A description of each of the executive orders and the dates through which they suspended prescriptive periods and other legal deadlines appears in *De La Rosa v. King*, 2021 WL 4845787 at pp. *3-4 (E.D. La. 10/18/21).

orders, JBE 2020-75 and 2020-84, extended the suspension periods until June 15 and July 5, 2020, respectively.

The statutes dealing with the governor's emergency orders (La. R.S. 9:5828-5830) took effect on June 9, 2020, before JBE 2020-84 was issued, and were enacted to address the statewide disruption, closure and displacement of courts, offices, clients and counsel as a result of the pandemic. La. R.S. 9:5828(A). The stated purpose of the legislation was "to prevent injustice, inequity, and undue hardship to persons who were prevented by the COVID-19 public health emergency from timely access to courts and offices in the exercise of their legal rights, including the filing of documents and pleadings as authorized or required by law." *Id.*

In Subsection (B) of § 5828, the Legislature approved, ratified and confirmed the action of the governor "in issuing Proclamation Number JBE 2020-30 and any extensions thereof . . . **subject to the provisions of this Part.**" (Emphasis added.)

La. R.S. 9:5829 directed that all periods of prescription and peremption, including liberative prescription, which would have expired between March 17, 2020 and July 5, 2020, were subject to a limited suspension or extension during that time, and that the right to file a pleading or motion to enforce any right, claim, or action which would have expired during that time period "shall expire on July 6, 2020."

La. R.S. 9:5830(A) extended "[a]ll deadlines in legal proceedings that were suspended by Proclamation Number JBE 2020-30 and any extensions thereof" in the same manner that prescriptive periods were extended in § 5829 (*i.e.*, any such deadlines that would have expired between March 17 and July 5, 2020 were subject to a limited extension during that time, and the right to file a pleading or

motion to enforce any deadline in legal proceedings which would have expired during that time "shall expire on July 6, 2020.")

The meaning of these statutes and executive orders has been litigated in various courts throughout the state. Courts have consistently interpreted them to mean that only those prescriptive periods and legal deadlines that would otherwise have expired during the period March 17 through July 5, 2020, were suspended or extended, and that all such periods of suspension or extension ended on July 6, 2020, and not on various other later dates, as urged by litigants defending against assertions of untimely action on their part. Those decisions include:

- *American Global Insurance Co. v. 4503 Prytania St, LLC*, 20-438 (La. App. 4 Cir. 4/14/21), 365 So.3d 662, 664, *writ denied*, 21-837 (La. 10/5/21), 325 So.3d 379 (appeal delays);
- *Soileau v. Churchill Downs Louisiana Horseracing Company, L.L.C.*, 21-22, 21-49, 21-199 (La. App. 4 Cir. 12/22/21), 334 So.3d 901, 935-36, 968-69, *writ denied*, 22-243 (La. 4/12/22), 336 So.3d 83 (legal deadlines concerning proposed settlement of class action);
- *Anding o/b/o Anding v. Ferguson*, *supra* (La. App. 2 Cir. 7/6/22), 342 So.3d at 1147 (prescription of wrongful death and survival claims);
- *Domino v. Spartan Adventure Park LLC*, 20-1365 (W.D. La. 3/31/21), 2021 WL 1324270, at pp. *3, 5; *report and recommendation adopted* (W.D. La. 4/8/21), 2021 WL 1321318 (prescription of tort claim);
- *De La Rosa v. King*, *supra*, 21-164 (E.D. La. 10/18/21), 2021 WL 4845787 at pp. *3-5 ("***De La Rosa 1***"); *reconsideration denied* (E.D. La. 5/13/22), 2022 WL 1524332 at p. *4 ("***De La Rosa 2***"); *affirmed sub nom. Sanchez De La Rosa v. King*, 22-30367 (5th Cir. 4/7/23), 2023 WL 2823896 at pp. *2-3 ("***De La Rosa 3***") (prescription of tort claim).

These cases had either not yet been decided, or the decisions were not final, when the First Exception was heard on May 3, 2021. The reasoning of the trial court in its ruling on the First Exception and of Plaintiffs in opposing both exceptions is contrary to the weight of these authorities.

But for the pandemic-related suspensions, and unless the *contra non valentem* discovery doctrine is applicable and properly pled and proven, Plaintiffs' medical malpractice claims would have prescribed on June 25, 2020, within the suspension periods established by the executive orders, including JBE 2020-84,

and La. R.S. 9:5828-5830. The question before us is whether the initial one-year prescriptive period, as suspended, expired on July 6, 2020, or on a later date.

Plaintiffs have argued, here and below, and the trial court in its ruling on the First Exception found, that Plaintiffs were not required to assert their malpractice claims by July 6, 2020 because the extension of the suspension period to July 5, 2020 in JBE 2020-84 was not subject to the statutory limitation requiring all claims that would have prescribed during the suspension period to be asserted by July 6, 2020. Plaintiffs have advanced several legal theories for this interpretation, all of which have been rejected in the case law cited above.

First, Plaintiffs asserted that the statutes only apply to suspensions of prescription ordered by the governor in "Proclamation Number JBE 2020-30 and any extensions thereof," as stated in La. R.S. 9:5828(B) and 5830(A). Plaintiffs take the position that JBE 2020-84 is not an extension of JBE 2020-30 because there is no specific reference to JBE 2020-30 in the body of JBE 2020-84, which refers only to JBE 2020-25 and 2020-75 on its face.

Secondly, Plaintiffs maintained that because JBE 2020-84 was issued after the statutes were enacted and did not include a date by which all claims subject to suspension had to be asserted, the provisions of the executive order superseded the provisions in the statutes.

Plaintiffs also claimed that the statutory limitation requiring all claims that would have prescribed during the suspension period to be asserted by July 6, 2020 conflicts with La. C.C. art. 3472, and that the latter prevails.[14]

Based on our review of the executive orders and the statutes and the manner in which they have been interpreted in the case law cited above, we conclude that

[14] La. C.C. art. 3472 states: "The period of suspension is not counted toward accrual of prescription. Prescription commences to run again upon the termination of the period of suspension."

JBE 2020-84 was clearly an extension of JBE 2020-30—the first executive order suspending prescriptive periods and other legal deadlines due to the pandemic—and was thus covered by the provisions of the statutes even though it was issued after the statutes were passed. *See and compare Soileau*, 334 So.3d at 935 n. 33, 969 n. 49; *De La Rosa 1*, 2021 WL 4845787 at p. *5; and *De La Rosa 2*, 2022 WL 1524332 at p. *4.

The Legislature's ratification and approval of Proclamation Number JBE 2020-30 and any extensions thereof was expressly qualified by the language, "subject to the provisions of this Part." La. R.S. 9:5828(B). Although the executive orders did not specify a date by which all claims subject to the suspension had to be asserted, the statutes did establish such a date: July 6, 2020. In the event of a conflict between the specific suspension provisions in the statutes and the more general provisions in the executive orders, the more specific statutory provisions prevail. *De La Rosa 3*, 2023 WL 2823896 at pp. *2-3, citing *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So.2d 1226, 1227, 1228-29.[15]

The Legislature recognized the potential conflict between the statutory limitation on when claims affected by the suspensions had to be asserted and other laws concerning the suspension of prescription, such as La. C.C. art. 3472, and expressly stated that the provisions of the 2020 legislation "shall preempt and supersede but not repeal any provision of the Civil Code or any other provision of law to the extent that such provision conflicts with the provisions of this Act." Acts 2020, 1st Extraordinary Session, No. 162, Section 2. This language makes it clear that the statutory provisions prevail over the provisions of La. C.C. art. 3472.

[15] In the first paragraph of the Discussion section of the *De La Rosa 3* court's opinion on page *3, the court stated that the plaintiff argued that "JBE 2020-25" suspended the applicable prescriptive period for "ten days through July 5, 2020 . . . [and] differs from and supersedes the Louisiana State Legislature's Statute." This statement appears to contain a typographical error in the order number. The order that suspended prescription for ten days through July 5, 2020, was JBE 2020-84.

Anding, 342 So.3d at 1148; *De La Rosa 1*, 2021 WL 4845787 at pp. *2, 4 n. 46; *De La Rosa 2*, 2022 WL 1524332 at p. *4.

The cases interpreting the executive orders and statutes on suspension of prescription due to the COVID-19 pandemic are consistent with the plain wording of the statutes and their stated purpose, which was to prevent the loss of legal rights due to the temporary lack of access to courts and other law-related offices during the period of statewide closures, disruptions and displacements that occurred in the first few months of the pandemic. La. R.S. 9:5828(A). As those restrictions eased, and access to courts and other parts of the legal system was restored, the need for further suspensions of prescriptive periods and other legal deadlines abated.

The interpretation of the suspension provisions at issue in this case is also consistent with how similar executive orders and ratifying statutes enacted in the aftermath of Hurricane Katrina were interpreted. *See Carmena v. East Baton Rouge Sheriff's Dept.*, 07-300 (La. App. 1 Cir. 2/8/08), 2008 WL 383383, 977 So.2d 303 (Table), *writ denied*, 08-567 (La. 5/2/08), 979 So.2d 1286. There, the court held that the plaintiffs were subject to the statutory requirement that all claims affected by the temporary suspensions of prescription from August 29, 2005 until January 3, 2006 had to be filed by January 4, 2006, despite no such requirement appearing in the governor's executive orders. *Id.* at pp. *1-3.

Compare *Brown v. Thuc Bao Thi Tran*, 09-1117 (La. App. 1 Cir. 12/23/09), 2009 WL 4981472, 25 So.3d 250 (Table), in which the court interpreted an executive order suspending prescription for 30 days in 2007 due to Hurricane Gustav. In that case, there was no legislation ratifying the executive order, and the order did not require that all claims affected by the suspension be filed by a certain date. The court applied the general provisions on suspension of prescription in La. C.C. art. 3472 by adding the number of days left in the initial prescriptive period

when the suspension took effect to the time remaining when the clock began running again. *Id.* at p. *2. The court distinguished the *Carmena* case, in which there was legislation limiting the time within which claims could be asserted once the suspension ended. *Id.* at p. *2 n. 1.[16]

In this case, we conclude that the initial one-year prescriptive period within which Plaintiffs were required to assert their medical malpractice claims, which would have expired on June 25, 2020 but for the pandemic-related suspensions of prescription, expired on July 6, 2020, unless it was further suspended due to *contra non valentem* or some other legally valid basis for suspension. Using July 6, 2020, as the expiration date, Plaintiffs' First Complaint was submitted to the Division of Administration before that date, on June 17, 2020, and would be considered timely if the filing fee was paid timely, a separate issue which we address below. Plaintiffs' Second Complaint was filed more than two months after July 6, 2020.[17]

Plaintiffs have argued, here and below, that the prescriptive period for asserting their malpractice claims was suspended for an additional 30 days in 2020 based on the Louisiana Supreme Court's August 28, 2020 order suspending all prescriptive and peremptive periods statewide from August 21–September 20, 2020 due to Hurricane Laura. If the prescriptive period expired before August 21, 2020, the Supreme Court order would not revive their claims. *See and compare Anding*, 342 So.3d at 1151 n. 8, and *Domino*, 2021 WL 1324270, at pp. *1, 5. As

[16] We need not address this court's recent split decision on a suspension of prescription issue in *Patterson v. Waste Connections of Louisiana, Inc.*, 24-536 (La. App. 5 Cir. 3/31/25), 2025 WL 974023, because it involved suspensions relating to Hurricane Ida in August 2021 which were based on a different emergency proclamation by the governor and a Louisiana Supreme Court order issued pursuant to La. C.C. art. 3472.1, none of which is relevant to the issues presently before us.

[17] As explained above, the filing date for the Second Complaint appears to be the date of mailing, which the parties seem to agree was October 2, 2020, but no evidence of the mailing date was introduced.

discussed below, however, that order may be relevant on remand with respect to the timeliness of Plaintiffs' payment of the filing fee for the First Complaint.

In its initial ruling denying Dr. Cattie's first prescription exception, the trial court found that Plaintiffs had sufficient notice of potential malpractice on the date of Mrs. Martin's death, June 25, 2019, to commence the running of the one-year prescriptive period on that date. After considering the pandemic-related suspensions of prescription, the court miscalculated the date upon which the prescriptive period, as extended, expired and concluded that prescription had not run by the time the Second Complaint was received by the DOA on October 5, 2020.

In light of the law on that issue as set forth above, the trial court's initial ruling on the prescription exception is based on palpable error in its interpretation of the applicable law on the suspension of prescription due to the COVID-19 pandemic. For this reason, and other reasons set forth above in our discussion of the Law of the Case Doctrine, the prior ruling on the exception was not binding on the trial court at the hearing on the Second Exception.

The trial judge who heard the Second Exception issued a judgment denying the exception but did not provide any oral or written reasons for that ruling. Although the court was not required to do so, we are unable to determine whether the court considered itself bound by the prior ruling under the Law of the Case Doctrine, as Plaintiffs argued at the Second Hearing, or whether the court conducted its own assessment of the law and the evidence, and if so, what factual findings and/or legal conclusions led the court to deny the exception.

Where one or more trial court legal errors interdict the fact-finding process, the manifest error/abuse of discretion standards of review which generally apply to a trial court's factual findings and discretionary rulings are no longer applicable, and, if the record is otherwise complete, the appellate court should make its own

independent *de novo* review of the evidence. *Cook v. Sullivan*, 20-1471 (La. 9/30/21), 330 So.3d 152, 157. However, *de novo* review is not required in every case. *LaBauve v. Louisiana Medical Mutual Ins. Co.*, 21-763 (La. 4/13/22), 347 So.3d 724, 733. In limited circumstances, when necessary to reach a just decision and to prevent a miscarriage of justice, an appellate court should remand the case to the trial court under the authority of La. C.C.P. art. 2164 rather than undertaking *de novo* review.[18] *Id.*

Effect of Submission of First Complaint on Prescription Issue

As stated above, both the party who submits a medical malpractice complaint for review and the PCF must take certain steps in order to meet the statutory requirements for completing the filing process and thereby initiating the suspension of prescription that occurs while the claim is pending before a medical review panel. In order to complete that process, the PCF must notify the claimant of certain matters within specified time periods, by certain specified means of communication, and the claimant must pay the filing fee timely. In this case, questions remain concerning whether the PCF and the Plaintiffs complied with those requirements so as to either achieve or defeat the timely filing of the First Complaint.

When a request for a medical review panel is filed with the Division of Administration, the PCF must communicate certain information to the claimant, by certified mail, return receipt requested, within 15 days of receipt of the claim. § 1231.8(A)(3). Among other things, the PCF must confirm its receipt of the request and notify the claimant of the amount of the filing fee due, the time frame within which it is due, and that, if the fee is not paid timely, the request for review of the

[18] La. C.C.P. art. 2164 directs that an appellate court "shall render any judgment which is just, legal, and proper upon the record on appeal." Although the present matter is before us on a writ application, evidence on the prescription issue was introduced at both prescription hearings in the trial court and is contained in the writ application.

claim "is invalid and without effect and that the request shall not suspend the time within which suit must be instituted" on the claim. § 1231.8(A)(3)(a), (b).[19]

The claimant must pay the filing fee within 45 days of his or her receipt of the initial notification letter from the PCF. § 1231.8(A)(1)(c). If the fee is not paid timely, the complaint is considered to be invalid and without effect, and it does not suspend the time within which suit must be filed after the administrative review process has been completed. § 1231.8(A)(1)(e).

The PCF must notify the claimant, by certified mail, return receipt requested, of its receipt of the filing fee or of other documents that would allow the fee to be waived, or that the required filing fee was not paid timely. § 1231.8(A)(4).

In this case, the evidence that was presented on the prescription exceptions in the trial court does not establish when Plaintiffs received the letter notifying them of the amount of the filing fee owed to the PCF for the First Complaint and of the 45-day period for paying the fee, which runs from the date of the claimant's receipt of the notification letter. La. R.S. 40:1231.8(A)(1)(c), as amended in 2016.[20]

Without evidence of when the 45-day period began to run, we cannot determine what effect, if any, the First Complaint had on the suspension of prescription that applies while a medical malpractice claim is pending with the

[19] The statute permits the PCF to send this notice to the claimant by regular first class mail when the PCF is unable to determine whether the notification by certified mail, return receipt requested, has been received by the claimant, or when the notification is not claimed or is returned undeliverable. § 1231.8(A)(5). In such cases, the date of mailing by regular mail "shall have the effect of receipt of notice by certified mail[.]" *Id.*

[20] The statute was amended by Acts 2016, No. 275. Before the amendment, the 45-day period for paying the filing fee began running on the date of mailing of the PCF's confirmation of receipt of the request for a medical review panel. Many of the reported cases in which there is no mention of when the claimant received that notice were decided under the prior law.

PCF. This issue must be addressed in order to reach a just decision on the prescription exception.

Dr. Cattie introduced in evidence a copy of a letter dated September 3, 2020, from the PCF to Plaintiff Melissa Martin, who had submitted the First Complaint, stating that "[o]n June 29, 2020," the PCF had advised her of the amount of the filing fee, the 45-day time frame for paying it, and that failure to comply would render the request for review invalid and without effect. The September 3 letter further stated that the PCF did not receive the filing fees due within the time allowed, and that "the above cited case is considered invalid and without effect."

Neither Dr. Cattie nor the Plaintiffs introduced the first letter from the PCF, or any documentation of how it was sent or when it was received by Ms. Martin, in evidence at either of the hearings on the prescription exceptions. At the First Hearing, Ms. Martin acknowledged that she had received the first letter but said she did not recall the exact date when she received it. She testified that she paid the $200 fee "within 45 days of receiving the notice from the PCF," but it appears from other evidence that she paid the fee after, rather than before, she received the second notice from the PCF advising her that the fee had not been paid timely.

In her affidavit filed in evidence at both hearings, Ms. Martin stated that she filed the initial complaint against Dr. Cattie on June 17, 2020, and that she "did get a letter from the patient's compensation fund within a few weeks after filing the complaint against Dr. Cattie advising that [she] had to pay a $200 filing fee[.]" She further stated in the affidavit that she was diagnosed with COVID-19 in August of 2020; that she mailed a check for $200 to the PCF on September 15, 2020; and that the PCF cashed the check on September 21, 2020 but later refunded the money to her.[21]

[21] La. R.S. 40:1231.8(A)(6) directs the PCF to return or refund to the claimant a filing fee that was not paid timely within 30 days of receipt of the untimely fee.

Regardless of who had the burden of proof, neither side presented evidence of exactly when Ms. Martin received the first notification letter from the PCF. The date of receipt can be proven by the certified mail receipt, or green card, if it indicates when the letter was delivered, or by delivery information obtained from the U. S. Postal Service's tracking service. *See, e.g., Parker v. University Medical Center-New Orleans*, 22-608 (La. App. 4 Cir. 1/23/23), 357 So.3d 455, 457-58, 466, and *Milligan v. Patient's Compensation Fund Oversight Board*, 23-1014 (La. App. 1 Cir. 5/31/24), 391 So.3d 48, 50-51, 53-54.[22]

Proof of the date of receipt is not required when the plaintiff does not dispute that the filing fee was not paid timely. *See Crane*, 347 So.3d at 981 n. 1, 985.

In this case, there is no evidence of the date of Plaintiffs' receipt of the letter notifying them of the filing fee amount and due date, and Plaintiffs have not conceded that the fee was not paid timely. Without that evidence, we cannot determine the validity of the First Complaint and its effect on the suspension of prescription of Plaintiffs' later claims asserted in the Second Complaint and in the Petition.[23] Nor can we determine whether the payment due date fell within the 30-day period during which all prescriptive and peremptive periods were suspended by Supreme Court order due to Hurricane Laura (August 21–September 20, 2020).

[22] If the statutory conditions for sending the letter by regular mail are met, proof of the date of mailing by regular mail would be required. § 1231.8(A)(5).

[23] It appears from the trial court's Reasons for Judgment denying the First Exception that the court considered the second letter from the PCF, notifying Ms. Martin that the fee had not been paid timely, to be sufficient proof that the First Complaint was invalid and without effect. As we appreciate the law, that letter, alone, is not enough to prove that the Plaintiffs' First Complaint was invalid and without effect when they have not conceded that the payment was untimely. Due to the lack of reasons for the trial court's denial of the Second Exception, we cannot determine whether the court considered itself bound by the prior ruling or what the legal or factual basis for the second ruling was.

Conclusion

The evidence before us concerning the prescription issue is incomplete and provides an insufficient basis for us to conduct a *de novo* review of the facts bearing on the exception. A determination of the legal effect of the First Complaint, which was submitted to the Division of Administration within one year of the date of the last alleged act of malpractice, which coincided with the date of Mrs. Martin's death, will have a bearing on whether the fact-intensive issues concerning delayed discovery of malpractice will need to be addressed in assessing the timeliness of the Second Complaint and the Petition.

In the interest of justice, an appellate court may remand a matter to the trial court for proper consideration of a prescription exception when the record is so incomplete that the court is unable to pronounce definitively on the issues or where the parties have failed, for whatever reason, to produce available evidence material to a proper decision. *Southern Trace Property Owners Assn. v. Williams*, 50,992 (La. App. 2 Cir. 11/23/16), 210 So.3d 835, 844-45; *Doucet v. Lafourche Parish Fire Protection Dist. No. 3*, 589 So.2d 517, 519-20 (La. App. 1 Cir. 1991).

Under the circumstances presented in this writ application, we grant the application, vacate the trial court's January 8, 2025 judgment denying Dr. Rabia Cattie's exception of prescription, and remand this matter to the trial court for further proceedings consistent with this writ disposition.

WRIT GRANTED; JUDGMENT DENYING RELATOR'S EXCEPTION OF PRESCRIPTION VACATED; REMANDED FOR FURTHER PROCEEDINGS.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 30, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-C-61

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE E. ADRIAN ADAMS (DISTRICT JUDGE)
SHELLY S. HOWAT (RELATOR)
GEORGE M. MCGREGOR (RESPONDENT)
ROBERT J. DAIGRE (RESPONDENT)

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