

EDWARD JOSEPH, JR.

NO. 24-CA-544

VERSUS

FIFTH CIRCUIT

WEST JEFFERSON HOLDINGS, LLC D/B/A
WEST JEFFERSON MEDICAL CENTER

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 851-033, DIVISION "P"
HONORABLE LEE V. FAULKNER, JR., JUDGE PRESIDING

April 02, 2025

MARC E. JOHNSON
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Timothy S. Marcel

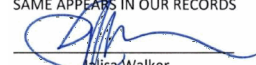
AFFIRMED AS AMENDED

MEJ

FHW

TSM

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


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Deputy, Clerk of Court

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WEST JEFFERSON HOLDINGS, LLC D/B/A WEST JEFFERSON MEDICAL
CENTER

Michael F. Nolan, Jr.

JOHNSON, J.

Appellant, Edward Joseph, Jr., seeks review of the 24th Judicial District Court's judgment granting Appellee/Defendant's, West Jefferson Holdings, LLC d/b/a, West Jefferson Medical Center ("WJMC"), Dilatory Exception of Prematurity. For the reasons that follow, we amend the judgment of the district court and affirm the judgment as amended.

FACTS AND PROCEDURAL HISTORY

On January 31, 2023, Edward Joseph, Jr. underwent an Urolift procedure performed by urologist, Dr. Matthew Strain. A year later, Mr. Joseph filed suit against WJMC for damages, alleging he sustained injuries when a monitor fell on his eye during the procedure. Mr. Joseph pleaded his claims under theories of strict liability, negligence, and *res ipsa loquitur*.

In March 2024, WJMC filed a Dilatory Exception of Prematurity arguing that Mr. Joseph's lawsuit was premature because he must first present his claims to a medical review panel pursuant to La. R.S. 40:1231.8 *et seq.* In support of its exception, the hospital filed proof of its enrollment in the Patient's Compensation Fund, and an affidavit from Dr. Strain asserting that the monitor was an "essential piece of equipment" used during the procedure. WJMC avers that the following occurred on January 31, 2023 during Mr. Joseph's procedure:

As part of the procedure, it was necessary for Dr. Strain to have the cysto-screen ("the monitor") in proper position. Prior to the beginning of the procedure, but after induction of anesthesia, Dr. Strain asked the Certified Registered Nurse Anesthetist to bring the screen closer to him. As the screen was being positioned, the boom attached to the screen collided with the boom of the light, causing a piece of plastic covering to fall off. The falling piece cut Mr. Joseph's face above his left eyebrow.

In August 2024, the trial court heard the exception and subsequently sustained WJMC's Dilatory Exception of Prematurity, dismissing Mr. Joseph's claims without prejudice. Plaintiff timely filed this appeal.

ASSIGNMENT OF ERROR

Mr. Joseph argues that the district erred when it found that the Louisiana Medical Malpractice Act (“LMMA”) applied to the facts in this case, sustained WJMC’s Dilatory Exception of Prematurity, and dismissed his claims without prejudice. He argues that the LMMA is to be strictly applied to claims arising from medical treatment services. Mr. Joseph avers his claims arise from administrative negligence, but requests leave to amend his petition, in the alternative.

WJMC counters that, based on the allegations in the petition, Mr. Joseph would have the court believe that he sat down on the operating table and a defective, rarely serviced monitor fell and hit him. However, it maintains that, as part of the procedure, it was necessary for Dr. Strain to have the cysto-screen (“the monitor”) in proper position. Prior to the beginning of the procedure, but after induction of anesthesia, Dr. Strain asked the Certified Registered Nurse Anesthetist to bring the monitor closer to him. As it was being positioned, the boom attached to the monitor collided with the boom of the light, causing a piece of plastic covering to fall off and cut Mr. Joseph’s face above his left eyebrow. Because the accident happened during the procedure, WJMC argues that the action sounds in medical malpractice, as opposed to general negligence.

LAW AND DISCUSSION

WJMC argues that it and its employees are entitled to the protections of the Louisiana Medical Malpractice Act, “including that of pre-suit medical review panel review of all claims of alleged medical malpractice.” (Emphasis in original). The dilatory exception of prematurity provided in La. C.C.P. art. 926 questions whether the cause of action has matured to the point where it is ripe for judicial determination, because an action will be deemed premature when it is brought before the right to enforce it has accrued. *LaCoste v. Pendleton Methodist Hosp., L.L.C.*, 07-08 (La. 9/5/07), 966 So.2d 519, 523. On the trial of the dilatory exception, evidence may be

introduced to support or controvert any of the objections pleaded, when the grounds for the exception do not appear from the petition. La. C.C.P. art. 930; *Dutrey v. Plaquemine Manor Nursing Home*, 12-1295 (La. App. 1 Cir. 6/17/13), 205 So.3d 934, 944.

Under the LMMA, a medical malpractice claim against a private qualified health care provider is subject to dismissal on an exception of prematurity if such claim has not first been presented to a medical review panel. *Id.*; La. R.S. 40:1299.47(A). This exception is the proper procedural mechanism for a qualified health care provider to invoke when a medical malpractice plaintiff has failed to submit the claim for consideration by a medical review panel before filing suit against the provider. *Id.* In such situations, the exception of prematurity neither challenges nor attempts to defeat the elements of the plaintiff's cause of action; instead, the defendant asserts the plaintiff has failed to take some preliminary step necessary to make the controversy ripe for judicial involvement. *Id.* The burden of proving prematurity is borne by the exceptor, in this case the defendant hospital, who must show that it is entitled to a medical review panel because the allegations fall within the LMMA. *Id.* at 523-24; *Matherne v. Jefferson Par. Hosp. Dist. No. 1*, 11-1147 (La. App. 5 Cir. 5/8/12), 90 So.3d 534, 536, *writ denied*, 12-1545 (La. 10/12/12), 98 So.3d 873.

A case must proceed within the procedure set forth in the LMMA if the claims sound in malpractice, but should proceed under general tort law if the claims sound in negligence. *Bonilla v. Jefferson Par. Hosp. Serv. Dist. #2*, 16-234 (La. App. 1 Cir. 12/28/16), 210 So.3d 540, 545, *writ denied*, 17-187 (La. 4/7/17), 215 So.3d 235. Whether a claim sounds in medical malpractice is a question of law conducted under a *de novo* standard of review. *Matherne, supra*. The LMMA and its limitations on tort liability for a qualified health care provider apply *only* to claims “arising from medical malpractice,” and that all other tort liability on the part of the qualified

health care provider is governed by general tort law. *Coleman v. Deno*, 01-1517 (La.1/25/02), 813 So.2d 303, 315. A medical malpractice claim against a private qualified health care provider is subject to dismissal on an exception of prematurity if the claim has not first been presented to a medical review panel. La. R.S. 40:1299.47(A)(1)(a); *Matherne, supra*.

The LMMA is set forth in La. R.S. 40:1231.1, *et seq.* The LMMA defines “malpractice” as

any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.

La. R.S. 40:1231.1(13). “Health care” means “any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement, or during or relating to or in connection with the procurement of human blood or blood components.” La. R.S. 40:1231.1(9).

In *Coleman, supra*, the Louisiana Supreme Court set forth a six-part test to determine whether a negligent act is covered by the LMMA. *Matherne*, 90 So.3d at 536. The *Coleman* factors include:

- 1) whether the particular wrong is “treatment related” or caused by a dereliction of professional skill;
- 2) whether the wrong requires expert medical evidence to determine whether the appropriate standard of care was breached;
- 3) whether the pertinent act or omission involved assessment of the patient's condition;
- 4) whether an incident occurred in the context of a physician-patient relationship, or was within the scope of activities which a hospital is licensed to perform;
- 5) whether the injury would have occurred if that patient had not sought treatment, and

6) whether the tort alleged was intentional.

Id. at 536-37. The LMMA's limitations on the liability of health care providers were created by special legislation in derogation of the rights of tort victims. *LaCoste*, 966 So.2d at 524-25. Any ambiguity should be resolved in favor of the plaintiff and against finding that the tort alleged sounds in medical malpractice. *Id.*

Using the *Coleman* factors to analyze Mr. Joseph's claim, we first find that the harm to Mr. Joseph was treatment related. He had been anesthetized, and the doctor asked the Certified Registered Nurse Anesthetist to adjust the equipment used for the medical procedure he was about to perform. Medical expertise may not be required to opine on whether the defendants' actions were prudent considering the physical set-up and mechanical operation of the subject equipment, or whether the equipment was properly maintained. *See Williams v. Hospital Service Dist. No. 1 of Jefferson*, 04-451 (La. 12/1/04), 888 So.2d 782, 789-90. However, expert medical testimony may be required to understand how the cysto-screen is used during the Urolift procedure and to determine whether the medical team's actions were reasonable under the circumstances, or whether the appropriate standard of care was breached. The pertinent act did involve assessment of the patient's condition as (part of) the device that broke and fell onto Mr. Joseph was being used to communicate information about the patient to the urologist while the procedure was being performed. Also, the incident obviously occurred in the context of a physician-patient relationship. Mr. Joseph's injury would not have occurred if he had not sought treatment. Last, the petition contains no allegations that the named defendants committed an intentional tort. After examination of Mr. Joseph's claims through application of the *Coleman* factors, we find that his claims sound in medical malpractice, and he should have first submitted them to a medical review panel in accordance with the LMMA.

Next, we consider Mr. Joseph's request for leave to amend his petition and WJMC's declaration that he "circumvented WJMC's rights under the [LMMA], and the remedy is to dismiss [his] claims against WJMC with prejudice." At trial on the exception, WJMC argued that the holding in *Dupuy v. NMC Operating Co., L.L.C.*, 15-1754 (La. 3/15/16), 187 So.3d 436, supported its argument that a failure to maintain [equipment] should still fall under the LMMA and allowing Mr. Joseph to amend his petition to assert an administrative negligence claim would not cure his defective petition. The district court's subsequent written judgment sustained the exception of prematurity, dismissed the petition without prejudice, and did not rule on the motion for leave to amend the petition.

When a judgment is silent as to a claim or demand that was litigated, it is presumed to be deemed denied by the trial court. *Cooper v. City of Kenner*, 19-383 (La. App. 5 Cir. 4/28/20), 296 So.3d 1073, 1074. However, the defendants in this matter have not yet filed an answer. "A plaintiff may amend his petition without leave of court at any time before the answer thereto is served." La. C.C.P. art. 1151. Further, this litigation only commenced a little over a year ago and Mr. Joseph also expressed a wish to conduct additional discovery. Therefore, we will allow him an opportunity to attempt to amend his petition under La. C.C.P. arts. 933 and 1151 to state a claim of action that does not fall within the ambit of the LMMA. *See Patterson v. Claiborne Operator Grp., L.L.C.*, 55,264 (La. App. 2 Cir. 11/15/23), 374 So.3d 299, 310.

DECREE

Considering the foregoing, the district court judgment sustaining WJMC's exception of prematurity is affirmed. We amend the district court's judgment to grant Mr. Joseph's motion for leave; Mr. Joseph has thirty days from the date of this disposition to file an amended petition, otherwise his claims will be dismissed with prejudice.

AFFIRMED AS AMENDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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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 **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-544

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HON. LEE V. FAULKNER, JR. (DISTRICT JUDGE)
MICHAEL F. NOLAN, JR. (APPELLEE)

MAILED

MARK D. SPEARS, JR. (APPELLANT)
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