

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-487

DWAYNE THOMPSON

versus

OCCUPATIONAL HEALTH CENTERS OF LOUISIANA, A PROFESSIONAL CORPORATION,
DR. ROBERTO RIVERA & DR. JAMES OKOH

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 833-034, DIVISION "L"
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

March 25, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Susan M. Chehardy,
John J. Molaison, Jr., and Scott U. Schlegel

AFFIRMED

JJM
SMC
SUS

TRUE COPY



JALISA WALKER
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
DWAYNE THOMPSON

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OCCUPATIONAL HEALTH CENTERS OF LOUISIANA, A
PROFESSIONAL CORPORATION

Guice A. Giambrone, III
A. Rebecca Wilmore

MOLAISON, J.

The appellant, Dwayne Thompson, seeks review of the July 8, 2025 judgment that granted the appellee's motion for summary judgment and dismissed his claims with prejudice. For the following reasons, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

On September 16, 2022, the appellant filed a Petition for Damages against Occupational Health Centers of Louisiana (OHCL), alleging that he was treated at OHCL during July and August 2021 for an injury to his right ankle. The appellant states that x-rays were taken of his ankle on July 28, 2021 and August 27, 2021, and he was told there was no dislocation or fracture. He continued to experience pain after attending multiple sessions of physical therapy and sought a second opinion. An MRI indicated that he had a fractured ankle that required surgical treatment. The appellant alleged that he experienced prolonged pain, unnecessary physical therapy, and other damages as a result of the negligence of OHCL and its employees for failing to perform proper diagnostic tests and to diagnose his condition.

OHCL answered the petition denying the allegations and asserting that the appellant's treatment took place during a public health emergency, which provides that a health care provider will only be liable for causing an injury or damage in the event of gross negligence or willful misconduct.

On April 4, 2025, OHCL filed a motion for summary judgment and asserted that the appellant had no expert testimony to show that OHCL breached the standard of care. The trial court held a hearing and granted summary judgment in favor of OHCL. The appellant then filed this timely appeal.

LAW AND DISCUSSION

The court shall grant a motion for summary judgment if the motion, memorandum, and supporting documents show that there is no genuine issue as to

material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The mover has the burden of proof. La. C.C.P. art. 966(D)(1). However, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. *Id.* The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.*; *Tate v. Ochsner Clinic Foundation*, 18-305 (La. App. 5 Cir. 6/28/18), 251 So.3d 1162, 1164. As an appellate court, we review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *Shortridge v. W. Calcasieu Cameron Hosp.*, 23-562 (La. App. 3 Cir. 3/20/24), 411 So.3d 651, 654, *writ denied*, 24-719 (La. 10/1/24), 393 So.3d 869.

A plaintiff in a medical malpractice action must prove by a preponderance of the evidence: (1) the standard of care applicable to the defendant; (2) that the defendant breached that standard of care; and (3) that there was a causal connection between the breach and the resulting injury. La. R.S. 9:2794; *Ackels v. Buhler*, 23-490 (La. App. 5 Cir. 5/29/24), 390 So.3d 456, 461, *writ denied*, 24-872 (La. 10/23/24), 395 So.3d 251.

In 2003, the legislature enacted the Louisiana Health Emergency Powers Act (LHEPA), La. R.S. 29:760, et seq. The LHEPA includes La. R.S. 29:771(B)(2)(c)(i), which provides:

During a state of public health emergency, no health care provider shall be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

On March 11, 2020, Governor John Bell Edwards, declared that a public healthcare emergency existed in Louisiana because of COVID-19 pursuant to the LHEPA. This public health emergency order was extended through March 16, 2022.

The burden of proof set forth in La. R.S. 29:771 relative to medical malpractice during a declared state of medical emergency prevails over the more general medical malpractice statutes. *Lejeune v. Steck*, 13-1017 (La. App. 5 Cir. 5/21/14), 138 So.3d 1280, 1284, *writ denied*, 14-1408 (La. 10/3/14), 149 So.3d 800. Consequently, to prevail in this medical malpractice action, Mr. Thompson must present evidence proving that OHCL was grossly negligent or committed willful misconduct pursuant to La. R.S. 29:771(B)(2)(c)(i) of the LHEPA.

Gross negligence is defined as:

... the ‘want of even slight care and diligence’ and the ‘want of that diligence which even careless men are accustomed to exercise’ ... the ‘entire absence of care’ and the ‘utter disregard of the of (sic) prudence, amounting to complete neglect of the rights of others.’ Additionally, gross negligence has been described as an ‘extreme departure from ordinary care or the want of even scant care.’ (Citations omitted.)

Rabalais v. Nash, 06-999 (La. 3/9/07), 952 So.2d 653, 658.

A plaintiff will likely fail to sustain the burden of proving his claim under La. R.S. 9:2794 without medical expert testimony due to the complex medical and factual issues involved in a medical malpractice lawsuit. *Pfiffner v. Correa*, 94-924 (La. 10/17/94), 643 So.2d 1228, 1234; *Burton v. Aspen Am. Ins. Co.*, 23-380 (La. App. 5 Cir. 3/27/24), 384 So.3d 1130, 1135-36. Only in cases of obvious negligence, where the trier of fact does not need an expert to assess the standard of

care, breach, and causation, is expert testimony unnecessary. *Burton*, 384 So.3d at 1136.

In support of its Motion for Summary Judgment, OHCL attached the affidavit of Dr. James Tebbe, Jr., attesting that he served on the medical review panel¹ to evaluate the care rendered by Cathy Hammond-Moulton, M.D., an OHCL employee who treated the appellant, and that the panel found the treatment rendered was within the standard of care. Dr. Tebbe further attested that he had recently reviewed the relevant records and documents and opined that OHCL did not breach the standard of care in the treatment of the appellant.

In opposition, the appellant submitted the affidavit of Jeffrey Meisles, M.D., who attested that he had reviewed the x-rays of the appellant's right ankle taken on July 28, 2021 and August 27, 2021, and the MRI taken on September 16, 2021. Dr. Meisles attested that OHCL and the defendant physicians "did not accurately interpret the imaging performed on appellant on August 27, 2021." Dr. Meisles opined that the failure to diagnose the fracture of the appellant's right foot was a deviation from the standard of care. Dr. Meisles concluded that the failure to diagnose the appellant "was negligent and is medical malpractice." The appellant also submitted an affidavit by Douglas Lurie, M.D., attesting that he treated the appellant on September 17, 2021, reviewed the x-rays of his right ankle, and noted a fracture. Dr. Lurie reviewed the September 16, 2021 MRI of the appellant's right ankle, discussed the MRI with the radiologist who performed the MRI, and confirmed a fracture. Dr. Lurie noted the appellant's injury "looks like a complex injury" and referred the appellant to a foot and ankle orthopedic subspecialist. Dr. Lurie did not address the treatment of the appellant by OHCL or make any statements regarding any alleged deviations from the standard of care by OHCL.

¹ The medical review panel did not specifically address the claims against OHCL because it is not a qualified medical provider under the Medical Malpractice Act.

Additionally, the appellant submitted his own affidavit outlining the treatment of his ankle injury and his opinions regarding the defendants' actions.

As discussed above, La. R.S. 29:771(B)(2)(c)(i) provides that during a state of public health emergency, "no health care provider shall be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct." *Welch v. United Med. Healthwest-New Orleans, L.L.C.*, 24-65 (La. App. 5 Cir. 6/13/24), 391 So.3d 123, 128, *affirmed*, 24-899 (La. 3/21/25), 403 So.3d 554.

Although the appellant's expert, Dr. Meisles, stated in his affidavit that failing to diagnose the fracture in the appellant's right foot was a deviation from the standard of care and amounted to medical malpractice, he did not mention gross negligence or willful misconduct. Therefore, the evidence the appellant submitted in opposition to OHCL's motion for summary judgment does not meet the burden of proof required to establish gross negligence or willful misconduct in this case.

CONCLUSION

For the preceding reasons, we affirm the July 8, 2025 judgment that granted the Motion for Summary Judgment filed by Occupational Health Centers of Louisiana and dismissed all claims of Dwayne Thompson against Occupational Health Centers of Louisiana with prejudice.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

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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 **MARCH 25, 2026** 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

25-CA-487

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)

PIUS A. OBIOHA (APPELLANT)

A. REBECCA WILMORE (APPELLEE)

GUICE A. GIAMBRONE, III (APPELLEE)

MAILED

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