

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-114

ROBERT SCIONEUX

VERSUS

OCHSNER CLINIC FOUNDATION D/B/A OCHSNER MEDICAL CENTER, LLC, OCHSNER
MEDICAL COMPLEX - RIVER PARISHES, ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE FORTIETH JUDICIAL DISTRICT
COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 79,088, DIVISION "A"
HONORABLE VERCELL FIFFIE, JUDGE PRESIDING

October 21, 2026

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Marc E. Johnson

WRIT DENIED

FHW
SMC
MEJ



COUNSEL FOR PLAINTIFF/RESPONDENT,
ROBERT SCIONEAUX

Tomy J. Acosta
James A. Harry

COUNSEL FOR DEFENDANT/RELATOR,
OCHSNER MEDICAL CENTER LLC D/B/A OCHSNER MEDICAL
COMPLEX - RIVER PARISHES

John B. Cazale, V
Joshua J. Spencer

WICKER, J.,

In this medical malpractice case, Defendant Ochsner Medical Center LLC d/b/a Ochsner Medical Complex – River Parishes seeks supervisory review of the trial court’s judgment denying its motion for summary judgment. On *de novo* review, we find that genuine issues of material fact remain precluding summary judgment. Accordingly, this writ is denied.

FACTS AND PROCEDURAL HISTORY

On January 11, 2023, Plaintiff Robert Scioneaux filed a petition for damages against Ochsner for medical malpractice. According to the petition, Plaintiff suffered a massive stroke in late 2018 that left him partially paralyzed on one side of his body and impaired his ability to walk. Following the stroke, Plaintiff could walk only with the aid of a walker and the assistance of another person, typically a family member. He subsequently underwent physical therapy at Ochsner to improve his mobility, and a family member customarily accompanied him to his appointments.

On June 24, 2020, Plaintiff arrived at Ochsner for a scheduled physical therapy appointment accompanied by a family member. Due to COVID-19 restrictions,¹ however, only Plaintiff was permitted to enter the facility. Plaintiff alleges in his petition that, when staff called him back to the therapy room, no one assisted him in standing or walking despite his mobility limitations. As a result, Plaintiff fell and fractured his right hip, ultimately requiring a total hip replacement.

¹ On March 11, 2020, former Governor John Bel Edwards declared a statewide public health emergency in response to the COVID-19 pandemic through Proclamation No. 25 JBE 2020. During the relevant period, Louisiana remained under emergency public health measures intended to reduce the transmission of the virus, including restrictions on gatherings, social distancing requirements, and occupancy limitations. *See* Proclamation Nos. 33 JBE 2020 and 18 JBE 2022. Consistent with those measures, Ochsner limited facility access to patients receiving treatment.

Plaintiff included with his petition a copy of the opinion of the Medical Review Panel rendered October 26, 2022. According to that opinion, the panel found that “*there was a deviation* from the appropriate standard of medical care by [Ochsner].” (Emphasis added). The panel continued: “The patient was a *fall risk* based upon *previous assessments*. Full precautions should have been implemented to prevent the fall in question.” (Emphasis added). The panel found that Ochsner’s deviation from the standard of care caused Plaintiff to fall and fracture his hip. However, the panel concluded that: “With regard to [the] gross negligence standard, the panel feels that this is all [an] act of omission not arising to the level of gross negligence.”

On March 20, 2025, Ochsner moved for summary judgment, arguing that Plaintiff could not satisfy his burden of proving gross negligence under the Louisiana Health Emergency Powers Act (LHEPA)² as he had failed to produce competent medical expert evidence. In support of its motion, Ochsner submitted numerous exhibits, including Governor Edwards’ health emergency proclamations, the Medical Review Panel’s October 26, 2022 decision, and Plaintiff’s responses to Ochsner’s discovery requests. The hearing on Ochsner’s motion was originally set for May 2, 2025, but Ochsner agreed to Plaintiff’s request to continue the matter until May 30, 2025. Plaintiff timely filed his memorandum in opposition on April 23, 2025. He did not submit any evidence beyond documents already introduced by Ochsner. Plaintiff relied principally upon the Medical Review Panel opinion as evidence of Ochsner’s breach of the standard of care and argued that

² The Louisiana Health Emergency Powers Act (LHEPA), La. R.S. 29:760 *et seq.*, affords healthcare providers immunity from civil liability for healthcare services rendered during a declared public health emergency absent gross negligence or willful misconduct. Accordingly, a plaintiff seeking to recover for alleged malpractice occurring during a qualifying emergency must prove gross negligence rather than ordinary negligence. *See* La. R.S. 29:771.

expert testimony was unnecessary to establish gross negligence because that determination is reserved for the factfinder.

On May 15, 2025, Plaintiff filed an untimely supplemental opposition identifying Dr. Neil Duplantier as an expert witness and attaching a report by Dr. Duplantier; however, that report was unsworn and not submitted through affidavit, deposition testimony, or other form of competent summary judgment evidence.³ On May 29, 2025, the day before the hearing, Plaintiff filed another motion to continue and attached to that motion a records-custodian certification from Dr. Duplantier's practice. The trial court heard arguments on the motion to continue the following day. Ochsner argued that whatever Plaintiff included in his supplemental opposition was untimely. The trial court granted Plaintiff's motion to continue over Ochsner's objections. Ochsner sought supervisory review of that ruling before this Court, arguing that the trial court abused its discretion in granting Plaintiff another continuance in order to allow him to supplement his opposition with a sworn affidavit from his expert witness. On August 28, 2025, this Court granted Ochsner's writ application, finding that the trial court had abused its discretion in continuing the summary judgment hearing.⁴ We accordingly ordered the trial court to decide Ochsner's motion for summary judgment based solely on the pleadings and competent summary judgment evidence filed as of May 30, 2025, pursuant to La. C.C.P. art. 966(A)(4)(a)–(b).

³ An unsworn expert report is not competent summary judgment evidence absent authentication by affidavit or deposition. See La. C.C.P. art. 966(A)(4); *Burton v. Aspen Am. Ins. Co.*, 23-380, (La. App. 5 Cir. 3/27/24), 384 So.3d 1130, 1137.

⁴ “Upon review, we find the district court abused its discretion in granting the motion for continuance to allow Plaintiff's expert's affidavit to be filed in compliance with the fifteen-day limit contained in Article 966.” *Scioneaux v. Ochsner Clinic Foundation d/b/a Ochsner Medical Center, LLC*, 25-332, p. 2 (La. App. 5 Cir. 8/28/25) (unpub.) (citing *Newsome v. Homer Mem'l Med. Ctr.*, 10-564, p. 3 (La. 4/9/10), 32 So.3d 800, 802–03. “[I]f the hearing is continued for some other reason unrelated to good cause, then this does not allow a party additional time to file its opposition to the motion for summary judgment.” *Id.* at pp. 2–3 (quoting *Bankers Ins. Co. v. EMIII Holdings, LLC*, 24-386, p. 20 (La. App. 4 Cir. 12/16/24), 407 So.3d 681, 695).

The trial court heard the motion on October 17, 2025 and took the matter under advisement. On February 10, 2026, the trial court denied summary judgment. In its written reasons, the trial court opined that the gross negligence standard under LHEPA applied, took judicial notice of the COVID-19 public health emergency, and acknowledged that Plaintiff had not submitted any expert medical opinions by sworn affidavit or deposition testimony concerning gross negligence. Nevertheless, the trial court reasoned that the Medical Review Panel's finding that Ochsner deviated from the appropriate standard of medical care, *i.e.*, committed ordinary negligence, provided factual support for one or more essential elements of Plaintiff's claim. The trial court concluded that a genuine issue of material fact remained as to whether Ochsner's alleged conduct rose to the level of gross negligence and, accordingly, denied the motion for summary judgment.

Ochsner now seeks supervisory review of the judgment and asks this Court to reverse it. Ochsner contends that Plaintiff cannot satisfy the heightened burden of proving gross negligence and that the Medical Review Panel's finding that Ochsner did not commit gross negligence defeats Plaintiff's claim. Accordingly, the issue before this Court is whether a trial court may consider a medical review panel's opinion that a healthcare provider's breach of the standard of care did not rise to the level of gross negligence in ruling on a motion for summary judgment. This matter was set for oral argument pursuant to La. C.C.P. art. 966(H), which was held on September 1, 2026. The matter was then submitted for decision.

LAW AND ANALYSIS

Appellate courts review summary judgment rulings *de novo*, applying the same criteria as the trial court. *Millet v. Moran Foods, LLC*, 23-227 (La. App. 5 Cir. 3/13/24), 384 So.3d 1074, 1076. Summary judgment is proper only when the evidence shows no genuine issue of material fact and the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). Ochsner contends that

Plaintiff cannot satisfy the heightened burden of proving gross negligence and that the Medical Review Panel's finding that Ochsner did not commit gross negligence defeats Plaintiff's claim. The question before this Court is whether, at the summary judgment stage, a trial court may consider a medical review panel's opinion that a healthcare provider's breach of the standard of care did not rise to the level of gross negligence. Consistent with Louisiana Supreme Court precedent, we find that it may not.

In a medical malpractice case, a plaintiff must prove the applicable standard of care, breach, and causation. La. R.S. 9:2794; *Deakles v. Se. La. Veterans Home*, 24-517 (La. App. 5 Cir. 2/26/25), 407 So.3d 899, 902–03. Expert testimony is generally required to establish those elements unless the negligence is so evident that a layperson could infer it. *Pfiffner v. Correa*, 94-924 (La. 10/17/94), 643 So.2d 1228, 1233–34. During a declared public health emergency, a healthcare provider is not civilly liable for its acts of ordinary negligence, only its acts of gross negligence or willful misconduct.⁵ See La. R.S. 29:771(B)(2)(c)(i). The Louisiana Supreme Court has confirmed LHEPA's broad applicability during declared emergencies. However, the Court has opined that while medical experts may render an opinion as to whether a healthcare provider has breached the standard of care, the degree of the healthcare provider's negligence—ordinary versus gross—is ordinarily a factual determination for the trier of fact. See *Sebble on Behalf of Estate of Brown v. St. Luke's #2, LLC*, 23-483 (La. 10/20/23), 379 So.3d 615, 622. The Supreme Court has also made clear that a plaintiff need not prove gross negligence at the summary judgment stage; once evidence of negligence is presented, the degree of negligence

⁵ On March 11, 2020, due to the COVID-19 pandemic, former Governor John Bel Edwards declared a statewide public health emergency via Proclamation No. 25 JBE 2020, triggering the application of La. R.S. 29:771. Ochsner attached that proclamation to its motion for summary judgment, as well as Proclamation Nos. 33 JBE 2020 and 18 JBE 2022. Courts may take judicial notice of these proclamations pursuant to La. C.E. art. 202(B)(1)(a). See *State v. Spell*, 21-876 (La. 5/13/22), 339 So.3d 1125, 1128 n.1).

is generally a question for the factfinder. *Stevens v. CLHG-Oakdale, LLC*, 26-78 (La. 4/28/26), 432 So.3d 122, 122–23.

Ochsner argues that Plaintiff failed to produce competent expert testimony to establish gross negligence and that Dr. Duplantier's unsworn report cannot be considered. Ochsner is correct that an unsworn expert report is not competent summary judgment evidence absent authentication by affidavit or deposition. *See Burton v. Aspen Am. Ins. Co.*, 23-380 (La. App. 5 Cir. 3/27/24), 384 So.3d 1130, 1137. Dr. Duplantier's report was submitted without either, and the custodian's certification cannot authenticate an expert opinion that the custodian did not author. Accordingly, the report is not competent summary judgment evidence. *See* La. C.C.P. art. 966(A)(4); *Burton*, 384 So.3d at 1137. Further, because of the untimely nature of Plaintiff's submission of Dr. Duplantier's report, we may not consider it. *See* La. C.C.P. art. 966(B)(2) (requiring the opposition and all documents in support of the opposition be filed at least fifteen days before the hearing).

Nevertheless, the fact that Dr. Duplantier's report is not competent summary judgment evidence does not mean that Plaintiff cannot establish a genuine issue of material fact regarding gross negligence. The Court must therefore consider whether the remaining competent evidence in the record is sufficient to satisfy Plaintiff's burden. The record includes the Medical Review Panel's unanimous opinion that Ochsner deviated from the applicable standard of care and that the deviation caused Plaintiff's injury. Pursuant to La. R.S. 40:1231.8(H), a medical review panel opinion is admissible in a subsequent malpractice action and may be considered by the trier of fact. *See Sebble*, 379 So.3d at 621 (citing to *Everett v. State*, 359 So.2d 1256, 1269 (La. 1978)). Ochsner argues, however, that because the panel also concluded that its conduct did not constitute gross negligence, and because Plaintiff identified no expert witnesses other than the panel members, Plaintiff cannot satisfy the heightened liability standard imposed by LHEPA. We disagree.

The determination of the degree of negligence under the LHEPA is not within the medical review panel's authority. As the Louisiana Supreme Court explained in *Sebble on Behalf of Estate of Brown v. St. Luke's #2, LLC*, a medical review panel's role is limited to rendering an expert opinion concerning whether a healthcare provider complied with the applicable standard of care. 23-483 (La. 10/20/23), 379 So.3d 615, 620–21. Questions concerning LHEPA immunity and the degree of fault necessary to impose liability are matters for the ensuing civil action, not the panel. *Id.* Accordingly, while the panel was authorized to opine that Ochsner breached the applicable standard of care and caused Plaintiff's injury, its conclusion regarding gross negligence exceeded the scope of its statutory function and cannot be used to defeat Plaintiff's claim on summary judgment. *Id.*

Here, the panel found that Plaintiff had previously been identified as a fall risk, that full fall precautions should have been implemented, and that Ochsner's failure to do so constituted a deviation from the standard of care that resulted in Plaintiff's hip fracture. Those findings constitute competent evidence supporting Plaintiff's claim. Whether such conduct amounts to ordinary negligence or gross negligence under LHEPA is a separate question. In *Stevens v. CLHG-Oakdale, LLC*, the Supreme Court reiterated that, although expert testimony may assist in establishing a breach of the standard of care, the distinction between ordinary negligence and gross negligence is generally a factual determination reserved for the trier of fact. 26-78 (La. 4/28/26), 432 So.3d 122, 122–23. There, the Court held that:

[P]laintiffs do not have the burden of establishing gross negligence on a motion for summary judgment. The degree of negligence is a question for the trier of fact. Given the evidence of negligence presented by plaintiffs, summary judgment is inappropriate at this juncture.

Id. at 123.

On *de novo* review, we find that Ochsner failed to establish its entitlement to judgment as a matter of law. The Medical Review Panel's findings provide evidentiary support for Plaintiff's allegations that Ochsner failed to implement necessary fall precautions for a patient previously assessed as a fall risk, that Ochsner's failure breached the appropriate standard of care, and that Ochsner's breach caused Plaintiff's injuries. From those facts, reasonable persons could differ as to whether Ochsner's conduct constituted ordinary negligence or gross negligence under LHEPA. But that determination is not for the panel to decide, it's for the factfinder. *See Stevens*, 432 So.3d at 122–23. Accordingly, genuine issues of material fact remain that preclude summary judgment.

CONCLUSION

For the foregoing reasons, this writ is denied.

WRIT DENIED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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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
OCTOBER 21, 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

26-C-114

E-NOTIFIED

40TH DISTRICT COURT (CLERK)
HONORABLE VERCELL FIFFIE (DISTRICT JUDGE)
VERCELL FIFFIE (RESPONDENT)
TOMY J. ACOSTA (RESPONDENT)

DEAN T. DEFRANCESCH (RESPONDENT)
JOHN B. CAZALE, V (RELATOR)

JAMES A. HARRY (RESPONDENT)
JOSHUA J. SPENCER (RELATOR)

MAILED

NO ATTORNEYS WERE MAILED