

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-63

MELISSA PHILLIPS AND THOMAS PHILLIPS

versus

OCHSNER FOUNDATION HOSPITAL, ET AL.

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL
DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 839-926, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

March 20, 2026

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, and Timothy S. Marcel

WRIT DENIED

TSM
SMC
JGG

TRUE COPY



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DEPUTY CLERK

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OCHSNER FOUNDATION HOSPITAL, GEORGE FUHRMAN, M.D.
AND BUCK SCOTT, M.D.

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MARCEL, J.

In this case arising from alleged medical malpractice, defendants Ochsner Foundation Hospital, George Fuhrman, M.D., Buck Scott, M.D. and John Doe, R.N., seek supervisory review of a December 1, 2025 judgment of the trial court that denied defendants' peremptory exception of prescription, but did grant their declinatory exception of insufficient citation and service of process and dismissed plaintiffs' claims without prejudice. For the following reasons, we deny this writ application.

BACKGROUND

The procedural facts of this case are undisputed. Plaintiffs filed their request for medical review panel on May 2, 2019 concerning medical treatment received by Ms. Phillips from defendants between May 26 and June 7, 2018. The medical review panel reached its conclusion on June 6, 2022 and mailed the panel opinion to all parties on July 1, 2022. Plaintiffs filed their lawsuit in the 24th Judicial District Court on September 26, 2022, but service was not requested on any defendant. On April 18, 2023, the first petition was dismissed without prejudice on an exception of insufficient citation and service of process filed by the defendants. Plaintiffs filed a second petition for damages on April 19, 2023, again without requested service. One defendant, Dr. Fuhrman, was served on July 16, 2025. On August 6, 2025, defendants filed the instant peremptory exception of prescription and, alternatively, declinatory exception of insufficiency of citation and service of process.

Before the trial court and in their writ, defendants argue that the deadline for plaintiffs' filing of the suit was October 25, 2022, which was 90 days from the receipt of the panel opinion on July 1, 2022, plus 26 days on the original one-year

prescriptive period to file suit.¹ Defendants argue that the trial court legally erred in denying their exception of prescription because the general rules for interruption and suspension of prescription found in the Louisiana Civil Code, specifically La. C.C. art. 3462 and 3463, do not apply to medical malpractice claims. For the reasons set forth in our discussion below, we disagree.

DISCUSSION

Liberative prescription is a mode of extinguishing a legal claim that has not been filed by a creditor during a time period stipulated by law. La. C.C. art. 3447. Prescription runs against all persons unless an exception is established by legislation. La. C.C. art. 3467. The Louisiana Medical Malpractice Act sets forth a prescriptive period of one year from the alleged act, omission or neglect, or one year from the discovery of the alleged act, omission or neglect within which to bring an action. *Borel v. Young*, 07-0419, p. 4 (La. 11/27/07), 989 So.2d 42, *on reh'g* (July 1, 2008). This one-year period is subject to all of the normal rules applied to suspension and interruption of prescription found elsewhere in the law. *Id.*

Ordinarily, the party urging prescription bears the burden of proof at the trial of the exception; however, if the petition is prescribed on its face, the burden shifts to the plaintiff to show the action is not prescribed by showing suspension, interruption, or renunciation of the prescription. *Hyginus v. Ochsner Clinic*, 24-263, p. 3 (La. App. 5 Cir. 1/29/25), 403 So.3d 1286, 1288. Where there is no dispute of material fact, but only the determination of whether the trial court was legally correct in granting or denying the exception, the trial court's decision is reviewed under the *de novo* standard of review. *In re Med. Review Panel of*

¹ The Louisiana Medical Malpractice Act also specifies that the filing of a request for medical review panel suspends prescription until 90 days after the notification, by certified mail, of a claimant or his attorney of the panel opinion. La. R.S. 40:1231.8.

Gerard Lindquist, 18-444, p. 4 (La. App. 5 Cir. 5/23/19), 274 So.3d 750, 754, *writ denied*, 19-01034 (La. 10/1/19), 280 So.3d 165.

At issue here is whether the prescriptive period in this case was interrupted with the filing of plaintiffs' suit. Louisiana Civil Code article 3462 stated²:

Prescription is interrupted when the owner commences action against the possessor, or when the obligee commences action against the obligor, in a court of competent jurisdiction and venue. If action is commenced in an incompetent court, or in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period.

Louisiana Civil Code article 3463 states in pertinent part:

An interruption of prescription resulting from the filing of a suit in a competent court and in the proper venue or from service of process within the prescriptive period continues as long as the suit is pending.

Additionally, Louisiana Civil Code article 3466 states:

If prescription is interrupted, the time that has run is not counted. Prescription commences to run anew from the last day of interruption.

Under these general rules, plaintiffs' failure to properly serve defendants was not a fatal defect because they had filed their suit in a competent court and in the proper venue. The filing of the first petition on September 26, 2022 interrupted the running of prescription until it was dismissed on April 18, 2023, and plaintiffs filed their second petition one day later, on April 19, 2023.

Defendants argue that these general rules of the Code of Civil Procedure do not apply in this case because the claims sound in medical malpractice. In support of their argument, defendants cite this Court's decision in *Gilly v. Ricciardi*, 21-381 (La. App. 5 Cir. 4/13/22), 339 So.3d 80, *writ denied*, 22-00773 (La. 10/4/22), 347 So.3d 887. In *Gilly*, we affirmed the granting of an exception of prescription in a medical malpractice case brought by plaintiffs against a state healthcare network where the plaintiff had filed their initial petition for damages but failed to

² La. C.C. art. 3462 was amended on August 1, 2025 by Acts 2025, No. 250, which specifically states that such amendments do not apply to actions that have prescribed prior to August 1, 2025; therefore, we do not include the amended language in our analysis here.

properly serve the defendants. This Court found that the specific rule of La. R.S. 13:5107 precluded the application of general Civil Code rules governing the interruption and suspension of prescription, and found that the plaintiffs' subsequently filed second petition was untimely.

It is undisputed that relators here are not state health care providers, however, they argue that *Gilly* was not limited solely to state health care providers. We disagree. La. R.S. 13:5107(D) states in pertinent parts:

(1) In all suits in which the state, a state agency, or political subdivision, or any officer or employee thereof is named as a party, service of citation shall be requested within ninety days of the commencement of the action or the filing of a supplemental or amended petition which initially names the state, a state agency, or political subdivision or any officer or employee thereof as a party. ...

(3) When the state, a state agency, or a political subdivision, or any officer or employee thereof, is dismissed as a party pursuant to this Section, the filing of the action, even as against other defendants, shall not interrupt or suspend the running of prescription as to the state, state agency, or political subdivision, or any officer or employee thereof; *however, the effect of interruption of prescription as to other persons shall continue.* [Emphasis supplied.]

Under Section D(3) of the above statute, the filing of a petition without proper service does not interrupt or suspend the running of prescription as to the state defendants, but the last sentence of that statute makes clear that “the effect of interruption of prescription as to other persons shall continue.” When a law is clear and unambiguous, and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. art. 9. We specifically refute relators' argument that our holding in *Gilly* demands plaintiffs' claims in this case be dismissed as prescribed. Defendants in this case are not state health care providers and are not entitled to the benefits of the prescriptive rules for state health care providers set forth under La. R.S. 13:5107.

Application of the general rules of prescription in this case is consistent with the Louisiana Supreme Court's ruling in *Bordelon v. Med. Ctr. of Baton Rouge*, 03-0202 (La. 10/21/03), 871 So.2d 1075. In *Bordelon*, the Supreme Court held that the filing of the case interrupts prescription of a medical malpractice case against non-state defendants even in the absence of proper service. In that case, the Supreme Court expressly applied La. C.C. arts 3462 and 3463 to find that the running of prescription had been interrupted.

Relators argue that *Bordelon* is no longer good law. In support of this claim, relators do not point to any case expressly overturning *Bordelon*, but argue that the Supreme Court's failure to mention *Bordelon* in subsequent rulings on the issue of prescription of medical malpractice claims means that *Bordelon* is not to be followed. This argument is unpersuasive. The cases cited by relators, *Borel v. Young*, 07-0419 (La. 11/27/07), 989 So.2d 42, *on reh'g* (July 1, 2008) and *Warren v. Louisiana Med. Mut. Ins. Co.*, 07-0492 (La. 12/2/08), 21 So.3d 186, *on reh'g* (June 26, 2009), concern filings against joint tortfeasors and the addition of new plaintiffs many years after the original filing, factual circumstances which are distinct from the procedural question presented here. We find nothing in those—or any other cases or statutes—to suggest that *Bordelon* has been overturned or superseded. Relators' argument is without merit.

On *de novo* review, we find that the trial court correctly applied La. C.C. arts 3462 and 3463 to find that the running of prescription on plaintiffs' claims was interrupted, and therefore properly denied defendants' peremptory exception of prescription. Accordingly, this writ is denied.

WRIT DENIED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
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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 20, 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-63

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)

M. SUZANNE MONTERO (RESPONDENT)

LEAH T. THERIO (RELATOR)

NAIRDA T. COLON (RELATOR)

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