

Fifth Circuit Court of Appeal State of Louisiana

No. 25-C-511

BETTY SUE DEAKLES

versus

SOUTHEAST LOUISIANA VETERANS HOME

IN RE SOUTHEAST LOUISIANA VETERANS HOME
APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
NGHANA LEWIS, DIVISION "B", No. 77,849

December 04, 2025

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

Linda Tran
First Deputy, Clerk of Court

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

WRIT GRANTED; JUDGMENT REVERSED; MOTION FOR SUMMARY JUDGMENT GRANTED

In this medical malpractice action, defendant Southeast Louisiana Veterans Home (“SLVH”) seeks supervisory review of the trial court’s judgment denying its second motion for summary judgment, arguing that plaintiff, Betty Sue Deakles, cannot meet her burden of proof at trial on causation because she lacks favorable expert testimony. For the reasons that follow, we grant the writ, reverse the trial court’s judgment, and render judgment granting SLVH’s motion for summary judgment and dismissing plaintiff’s claims.

Facts and Procedural History

This matter came before this Court after the trial court denied SLVH's first motion for summary judgment. The facts and procedural posture are well outlined in our previous writ disposition:

Plaintiff, Betty Sue Deakles, the surviving spouse of Mr. Ras Eugene Deakles, on April 26, 2022 filed a petition for damages for the alleged wrongful death of her husband against defendant SLVH. Mr. Deakles was a resident of SLVH for approximately five years until his death on April 4, 2020. In her petition, Mrs. Deakles alleges that, at the outbreak of the COVID-19 pandemic in March of 2020, SLVH violated directives of the Centers for Medicare and Medicaid, the Louisiana Department of Health, and the Governor's Office, by continuing to hold communal activities within its facility.

Mr. Deakles was diagnosed with a suspected case of COVID-19, but was allowed by SLVH staff to continue participating in communal dining activities. He died thirty-six hours later. Mrs. Deakles' petition alleges that Mr. Deakles died as a result of COVID-19, and states that the gross negligence of SLVH in failing to carry out proper social distancing protocols as well as official government directives ultimately caused Mr. Deakles to die from COVID-19.

Mrs. Deakles included with her petition a copy of the opinion of the Medical Review Panel rendered January 24, 2022. According to that opinion, the panel found that SLVH failed to comply with the appropriate standard of care as charged in the complaint. However, as to whether the standard of care breach caused Mr. Deakles' death, the opinion states, "the panel is unable to answer whether the conduct complained of was or was not a factor of the resultant damages." They went on to state, "[t]he panel is unable to answer whether or not the breaches were or were not a factor in the resultant damages as the panel is unclear of the patient's cause of death." The opinion also states that the panel felt that SLVH's breaches of the standard of care represented "gross negligence."

In its first set of discovery requests to plaintiff, defendant requested that plaintiff identify expert witnesses who may provide an opinion that a causal connection exists between the alleged breaches of the standard of care by SLVH and the resulting injury to Mr. Deakles or to produce any affidavit or expert report on the causal connection between the breach of the standard of care and Mr. Deakles' death. In her discovery

responses, plaintiff named Dr. James Tebbe, Dr. J. Kevin Russ, and Dr. A. Brent Alper, Jr., who were the Medical Review panelists, as witnesses and their January 24, 2022 Opinion and Reasons as their report. Plaintiff pointed to the opinion of the medical review panel and also argued that expert testimony is not required on the matter of causation in this instance because the breaches of the standard of care in continuing to hold communal activities would, even to a layperson, obviously cause the spread of COVID-19 at the SLVH facility which killed Mr. Deakles. According to plaintiff, “defendant’s assertion that causation requires expert testimony ignores that the relationship between communal activities and the spread of COVID-19 is a matter of common knowledge and logical inference.”

Deakles v. Southeast La. Veterans Home, 24-517 (La. App. 5 Cir. 2/26/25), 407

So.3d 899, 900-01. We denied SLVH’s writ application at that time, finding genuine issues of material fact remained and acknowledging that additional evidence could be presented to allow the named experts to express causation opinions at trial, even though they could not do so while serving as medical review panelists. *Id.* at 904. At that time, the medical review panelists had not been deposed.

SLVH subsequently deposed the panelists/experts and filed a second motion for summary judgment, reasserting its argument that plaintiff cannot prove the element of causation at trial. For purposes of its summary judgment motion, SLVH did not contest liability. In opposition, plaintiff again argued that expert medical testimony was not necessary because the jury could infer causation.

Following a hearing on the second summary judgment motion, the trial court determined that the question of causation remained a disputed issue of material fact and therefore denied defendant’s motion. SLVH again seeks supervisory review. This matter was set for oral argument pursuant to La. C.C.P. art. 966(H).

Discussion

The issue before us is whether plaintiff must present expert medical testimony to satisfy her evidentiary burden of proving causation.

A motion for summary judgment shall be granted 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 burden of proof rests with the mover. La. C.C.P. art. 966(D)(1). Nevertheless, 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.* Where the motion for summary judgment meets that threshold, the burden shifts to 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.*

We review the denial of a motion for summary judgment *de novo*. *Bourgeois v. Allstate Ins. Co.*, 15-451 (La. App. 5 Cir. 12/23/15), 182 So.3d 1177, 1181. Under this standard, we use the same criteria as the trial court in determining if summary judgment is appropriate: whether there is a genuine issue as to material fact and whether the mover is entitled to judgment as a matter of law. *Richthofen v. Medina*, 14-294 (La. App. 5 Cir. 10/29/14), 164 So.3d 231, 234, *writ denied*, 14-2514 (La. 3/13/15), 161 So.3d 639.

The party moving for summary judgment must meet a strict standard of showing that the facts are clear and that any real doubt as to the existence of a genuine issue of material fact has been excluded. *Richthofen*, 164 So.3d at 234. If the mover meets this burden, the burden shifts to the non-mover to present evidence demonstrating that material issues of fact remain. *Id.*

To prevail on a medical malpractice claim, the plaintiff 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 resulting injury.¹ *Moss v. Stokes*, 21-40 (La. App. 5 Cir. 10/20/21), 329 So.3d 1100, 1103, *writ denied*, 21-1740 (La. 1/26/22), 332 So.3d 83. The test for determining the causal connection between the breach and resulting injury requires the plaintiff to prove through medical testimony that it is more probable than not that substandard care was a cause of the injury. *Cahanin v. Louisiana Med. Mut. Ins. Co.*, 17-284 (La. App. 5 Cir. 12/20/17), 235 So.3d 1250, 1256, *writ denied*, 18-0129 (La. 3/9/18), 238 So.3d 451; *see also Hastings v. Baton Rouge Gen. Hosp.*, 498 So.2d 713, 720 (La. 1986)

¹ La. R.S. 9:2800.25 establishes a limitation of liability for actual or alleged exposure to COVID-19. Section A of that statute provides:

No natural or juridical person, state or local government, or political subdivision thereof shall be liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person's, government's, or political subdivision's business operations unless the person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person's, government's, or political subdivision's gross negligence or wanton or reckless misconduct. If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, government, or political subdivision shall substantially comply with any one applicable set of procedures.

As discussed in our previous disposition in this case, although the medical review panel characterized SLVH's conduct as "gross negligence," the degree of the provider's breach of the standard of care, i.e., whether there is gross negligence as opposed to regular negligence, is a judicial determination for the trier of fact. *Sebble on Behalf of Estate of Brown v. St. Luke's #2, LLC*, 23-483 (La. 10/20/23), 379 So.3d 615, 622; *see also* La. R.S. 29:771(c)(i) ("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.").

Dr. Russ and Dr. Tebbe both testified during their depositions that the panel's finding of negligence on the part of SLVH was based on three communal bingo games held after the COVID-19 guidelines had been issued, and the fact that Mr. Deakles was allowed in a dining room after he already had been suspected of having COVID-19.

(finding it is incumbent upon the plaintiff to prove that the defendant's conduct increased the risk of a patient's harm such that it was a substantial factor in causing the result, but the substandard conduct need not be the only cause of the injury).

When the issues in a medical malpractice claim involve medical and factual complexity beyond common knowledge, expert testimony is required to assist the trier of fact in determining causation. *Pfiffner v. Correa*, 94-924 (La. 10/17/94), 643 So.2d 1228, 1234; *see also Slaydon v. River Oaks, Inc.*, 23-452 (La. App. 5 Cir. 4/24/24), 386 So.3d 706, 709 (“Normally, in cases involving patients with *complicated medical histories or complex medical conditions*, causation is simply beyond the domain of lay persons to assess without the assistance of expert medical testimony.” (Emphasis in original)); *Henry v. Weishaupt*, 17-26 (La. App. 5 Cir. 5/31/17), 221 So.3d 299, 304, *writ denied*, 17-1066 (La. 10/9/17), 228 So.3d 746.

Louisiana courts nevertheless recognize certain exceptions to the requirement for expert testimony in support of a medical malpractice claim. *Pfiffner*, 643 So.2d at 1233. Those exceptions are limited to situations involving “obvious careless acts, such as fracturing a leg during examination, amputating the wrong arm, dropping a knife, scalpel, or acid on a patient, or leaving a sponge in a patient's body” such that the finder of fact can infer both negligence and causation. *Id.* at 1234; *see also Slaydon*, 386 So.3d at 709 (expert testimony is not necessary where causation is obvious, such as when a patient is left to bleed to death in an emergency room).

In *Pfiffner*, the Louisiana Supreme Court found that the only expert testimony offered on causation favored defendants, because the testimony established that attending to the patient's condition earlier would have made no difference, as the decedent's condition was inoperable. The Court therefore held that Mrs. Pfiffner failed to meet her burden of establishing that the physicians'

allegedly unreasonable delay in diagnosis and treatment contributed to her husband's death. *Id.* at 1234-36.

As in *Pfiffner*, the only expert testimony in the record related to the issue of causation comes from plaintiff's own experts, but that testimony favors the defendant, not plaintiff. Dr. J. Kevin Russ explained: "[T]ypically, we didn't see patients have relatively mild symptoms and then die suddenly. So the picture of Mr. Deakles' demise and death was not consistent with what we had seen – or what I had seen related to COVID infections." Dr. Russ agreed that although the breach of the standard of care may have caused Mr. Deakles to contract COVID, Dr. Russ could not provide an opinion stating that the breach caused his death. Dr. Russ stated: "in my mind it was unclear really what his cause of death was."

Dr. James Tebbe also testified that the cause of death was unclear, because the death certificate listed acute respiratory failure, pneumonia, and COVID-19. Dr. Tebbe's deposition testimony states: "The respiratory failure and pneumonia, those types of things, usually when they're the cause of death, actual cause of death, you don't go from presenting symptoms to death within a 24-to-36-hour period. ... he went from having very few symptoms, basically just fever, to expiring."² Dr. Tebbe also discussed Mr. Deakles' other health issues that may have caused or contributed to his death: "he had diabetes and high blood pressure. He had – he had had a stroke. He had lung disease. The only thing that would have caused that that I can think of, that would have caused those types of sudden things to happen would have been either a cardiac arrest ... [o]r possible venous

² The medical records indicate that Mr. Deakles passed away within 36 hours of the first onset of any COVID-related symptoms was charted. In the early morning of April 3, 2020, Mr. Deakles had a slight fever. He was prescribed acetaminophen and oral fluids for the fever and given Tramadol for knee pain. Later that afternoon, his temperature was elevated and Mr. Deakles was given acetaminophen. That evening, the staff noted that he had developed a lower respiratory infection. Later that night, Mr. Deakles fell on the floor after getting up to use the bathroom, though he denied hitting his head. The next morning, Mr. Deakles was prescribed hydroxychloroquine and azithromycin for the COVID infection. At 4:25 that afternoon, vomit was found in front of his wheelchair. At 5:15 p.m., Mr. Deakles was found on the floor in his bathroom and had passed away.

thromboembolic event like a – like a pulmonary embolism. Those types of things could have caused that rapid course, where he went from presentation to – to death so quickly.” Dr. Tebbe agreed that without an autopsy, it was difficult to determine the cause of death. He stated that the suddenness of the death belied the suggestion that Mr. Deakles died from respiratory failure and pneumonia secondary to COVID.

Dr. Brent Alper, the third medical review panel member, testified that he had not been presented with any information that SLVH’s alleged breach of the standard of care caused Mr. Deakles to develop COVID-19 and die, and he did not expect that additional information would change his opinion.

Dr. Russ, Dr. Tebbe, and Dr. Alper, the medical review panelists, are plaintiff’s only designated experts, yet none of them will testify at trial that the breach of the standard of care by SLVH led to Mr. Deakles’ death.

Mr. Deakles’ medical history includes hypertension, diabetes, lung disease, and a stroke, among other maladies, which Dr. Tebbe explained were more likely to have caused Mr. Deakles’ rapid demise than the contraction of COVID-19. Refuting the medical review panelists’ testimony to create a genuine issue of material fact would require additional expert testimony on causation, but plaintiff has no additional expert testimony to offer. Even if proving *negligence* (which SLVH concedes for purposes of its motion for summary judgment) were possible without expert testimony under these facts, this is not the type of case in which plaintiff can meet her burden of proof on *causation* without expert testimony.

Mr. Deakles’ death certificate also fails to establish the cause of death. *See Perry v. Employers Ins. of Wausau*, 24-535 (La. App. 5 Cir. 8/6/25), 2025 WL 2233825, at *13, *writ denied*, 25-1137 (La. 11/19/25), 2025 WL 3227531 (finding that cause of death listed on the death certificate was not conclusive as to cause of death; the death certificate is proof only of the death itself, not the cause);

McKelvey v. City of DeQuincy, 07-604 (La. App. 3 Cir. 11/14/07), 970 So.2d 682, 688; *Prine v. St. Paul Fire & Marine Ins. Co.*, 32,559 (La. App. 2 Cir. 12/8/99), 749 So.2d 831, 835.

Finally, regarding plaintiff's December 2, 2025 motion to dismiss the writ application and for sanctions, there is no indication that plaintiff first filed this motion in the district court to address the alleged discovery violations, and this Court does not accept evidence or resolve these types of disputes in the first instance. Even so, the tardy document production about which plaintiff complains appears to involve documents related to communal activities, family reporting, and resisting exposure to COVID-19, not to Mr. Deakles' particular case, and thus has no bearing on causation. As such, we deny plaintiff's motion to dismiss as moot.

In sum, we grant defendant's writ application, reverse the trial court's judgment, grant summary judgment in favor of Southeast Louisiana Veterans Home, and dismiss plaintiff Betty Sue Deakles' medical malpractice claims against it. Plaintiff's motion to dismiss this writ application is denied as moot.

Gretna, Louisiana, this 4th day of December, 2025.

SMC
FHW
TSM

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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JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **12/04/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

25-C-511

E-NOTIFIED

40th District Court (Clerk)
Honorable Nghana Lewis (DISTRICT JUDGE)
Dennis J. Phayer (Relator) Elizabeth B. Murrill (Relator)
Mary K. Peyton (Relator)

MAILED

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