IN RE: MEDICAL REVIEW PANEL PROCEEDINGS OF ISAAC, SILHOMME

NO. 25-C-251

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

June 18, 2025

Linda Tran
First Deputy Clerk

IN RE WEST JEFFERSON HOLDINGS, LLC D/B/A WEST JEFFERSON MEDICAL CENTER AND UNIVERSITY MEDICAL CENTER NEW ORLEANS

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E. ADRIAN ADAMS, DIVISION "G", NUMBER 859-480

Panel composed of Judges Fredericka Homberg Wicker, John J. Molaison, Jr., and Timothy S. Marcel

WRIT GRANTED; JUDGMENT REVERSED

In this suit arising from alleged medical malpractice, defendant-relator West Jefferson Holdings, LLC d/b/a West Jefferson Medical Center and University Medical Center of New Orleans ("West Jefferson Medical Center") seeks supervisory review of an April 28, 2025 judgment of the trial court denying its peremptory exceptions of prescription. We grant this writ and reverse the judgment of the trial court for the following reasons.

BACKGROUND

Plaintiff Silhomme Isaac filed his first medical review panel request on April 1, 2024 wherein he stated that the dates of the alleged malpractice occurred on or before November 10, 2021. Mr. Isaac's claims against defendant appear to relate to a claimed misdiagnosis and gastroenterological surgical procedures performed at West Jefferson Medical Center in October, 2018 and October, 2021. Plaintiff also stated that in October of 2021[1], he visited a different doctor, Dr. James Christopher, and received indication that these initial procedures at West Jefferson "may indicate medical malpractice and require investigation." Plaintiff had additional gastroenterological procedures on November 10, 2021 and October 19, 2023.

[1] This claim was amended in a second medical panel review request to state that this occurred during his October 19, 2023 visit to Dr. Christopher.

Defendant West Jefferson Medical Center filed a peremptory exception of prescription in which it argued that plaintiff's claims, which were only filed on April 1, 2024, were clearly prescribed on the face of the pleadings since the medical review panel request clearly stated that the date of the alleged malpractice occurred "on or before November 10, 2021." Plaintiff did not file a timely opposition to this exception. Plaintiff introduced no evidence in support of this claim at the hearing on the exception.

DISCUSSION

La. R.S. 9:5628 states in pertinent part:

> A. No action for damages for injury or death against any physician…[or] hospital… whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at least within a period of three years from the date of the alleged act, omission, or neglect.

At a hearing on a peremptory exception pleaded prior to trial, evidence may be introduced to support or controvert the exception. La. C.C.P. art. 931. Ordinarily, the exceptor bears the burden of proof at trial of the peremptory exception, including prescription. *In re Med. Review Panel of Gerard Lindquist*, 18-444, p. 3 (La. App. 5 Cir. 5/23/19), 274 So.3d 750, 754, *writ denied*, 19-01034 (La. 10/1/19), 280 So.3d 165. However, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show that the action has not prescribed. *Id*. A petition is not prescribed on its face if it is filed within one year of discovery and particularly alleged facts show that the patient was unaware of malpractice before that date, so long as the filing delay was not willful, negligent, or unreasonable. *In re Med. Review Panel of Heath*, 21-01367, p. 5 (La. 6/29/22), 345 So.3d 992, 996. Whether the complaint is prescribed on its face is purely a question of law, subject to *de novo* review. *Id*.

In *Heath*, *Id*. at 996-97, the Louisiana Supreme Court clearly articulated the questions that must be answered by the court when trying to decide which party bears the burden of proof in situations where the plaintiff seeks to invoke the discovery rule in response to an exception of prescription filed by defendants:

> To determine who bears the burden of proof, we must answer the following questions: 1) was the complaint filed within one year of the date of the alleged acts of malpractice? 2) if not, was the complaint filed within one year of the date of discovery of the alleged acts of malpractice? If plaintiffs rely upon discovery as the trigger of prescription, the following must be answered: 1) did plaintiffs allege *with particularity* they were unaware of the malpractice prior to the alleged date of discovery; and 2) was plaintiffs' delay in discovering the malpractice reasonable? *The petition must state with particularity the act of alleged malpractice*

and the date it was discovered, and these questions must be answered solely upon the allegations of the complaint.

(Emphasis supplied.)

A review of the medical panel review requests filed by plaintiff indicate that plaintiff has failed to allege with particularity that he was unaware of prior acts of malpractice and has failed to allege any particular facts indicating that such a delay in discovering the alleged malpractice was unreasonable.

Plaintiff's second medical review panel request states:

> **Defendant Name and Allegations:** University Medical Center, Dr. James Christopher, performed the first surgery on Mr. Isaac, which was unsuccessful, leaving him with a tumor that doubled in size and caused more severe pain.
>
> October 19, 2023 visited LCMC for another Partial Gastrectomy Laparoscopic Esophagogastroduodenoscopy (EGD) with Dr. James Christopher. Mr. Isaac received surgical pathology from Dr. James Christopher. Mr. Isaac was taken to the operating room and placed in the supine position. Since during the first procedure, only a portion of the anterior aspect of the gastric antrum was aspirated, which may indicate medical malpractice and require investigation.
>
> Silhomme Isaac underwent surgery at LCMC and booked an appointment with Dr. Thomas Marck Reske, MD for a cancer checkup. He wanted to follow up on the malpractice he received from West Jefferson. Dr. Thomas Reske, MD requested a CT chest with Contrast exam and a CT Abdomen pelvis with Contrast.

Plaintiff's claims are vague and almost indecipherable. It is unclear exactly when Mr. Isaac received actual or constructive notice that he had been injured by medical malpractice. It is not clear what information or notice he received as part of the surgical pathology from Dr. Christopher. It is also unclear whether Mr. Isaac may have been on constructive notice prior to the October 19, 2023 visit.

On *de novo* review, we find that plaintiff's claims against West Jefferson Medical Center have prescribed on their face. Plaintiff bore the burden of proving that the claims have not prescribed and failed to meet that burden by failing to introduce evidence in support of the claim at the hearing on the exception.

La. C.C.P. art. 934 requires that when the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court.

DECREE

Accordingly, we reverse the April 28, 2025 judgment of the trial court and sustain the peremptory exception of prescription filed by defendant West Jefferson Medical Center. Plaintiff is granted 14 days from the date of this judgment to file an amended medical review panel request that states with particularity the acts of alleged malpractice and the circumstances under which the malpractice was discovered so that a court may ascertain whether the plaintiff's delay in filing his claims was reasonable. If plaintiff does not file such an amended medical review panel request within the delay allowed, his claims shall be dismissed with prejudice.

Gretna, Louisiana, this 18th day of June, 2025.

TSM
FHW
JJM

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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 **06/18/2025** 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:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-C-251

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable E. Adrian Adams (DISTRICT JUDGE)
Richard S. Crisler (Relator)
Bryan J. Knight (Respondent)
C. William Bradley, Jr. (Relator)
Connie P. Trieu (Respondent)
Lance V. Licciardi, Jr. (Relator)
Jada C. Doucet (Relator)

MAILED