

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-513

JANA PODRET WIFE OF/AND ROGER WILLIAMS
INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILD
CW

versus

KEHOE-FRANCE, INC., ET AL.

IN RE KEHOE-FRANCE, INC. AND ISP KEHOE HOLDINGS, LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
STEPHEN D. ENRIGHT, JR., DIVISION "N", No. 857-470

TRUE COPY

October 24, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, Marc E. Johnson, Stephen J. Windhorst, and John J. Molaison, Jr.

WRIT GRANTED, IN PART; DENIED IN PART

Defendants/relators, Kehoe-France, Inc. and ISP Kehoe Holdings, LLC, seek expedited review of the October 21, 2026 Judgment of the 24th Judicial District Court granting in part and denying in part their Motion in Limine to Exclude HIPAA Testimony and Related Evidence.¹ For the reasons stated below, we grant the writ application in part and deny it in part.

BACKGROUND:

¹ HIPAA is an acronym for the Health Insurance Portability and Accountability Act of 1996, a federal law that, for purposes of this opinion, prohibits health care providers, health plans, and certain related entities from disclosing a patient's protected health information (PHI) without the patient's consent. *See* 42 U.S.C. § 1301, *et seq.*; 45 CFR §§ 160, 164. HIPAA is enforced administratively by the U.S. Department of Health and Human Services. It does not provide for private enforcement by persons not subject to HIPAA and does not convey enforcement jurisdiction to state courts.

In their lawsuit, plaintiffs/respondents, Roger Williams and Jana Podret, seek damages individually and on behalf of their minor child, C.W., as a result of injuries allegedly sustained by C.W. on March 25, 2024, when she was a student at Kehoe-France Schools Southshore (the “School”), which is owned and/or operated by relators. Plaintiffs allege that the school failed to properly supervise the children in C.W.’s pre-K3 class and that, as a result, W.M., another student in the class, inappropriately touched C.W. Both children were three years old at the time of the alleged inappropriate touching incident. All of plaintiffs’ claims in this case stem from their allegations that the school was negligent in its supervision of the children, which relators have denied. A jury trial is scheduled to commence on October 26, 2026.²

The motion in limine (the “Motion”) at issue here involves communications between Emily and Claire Poche, two non-parties to this litigation, and actions taken by the employers of these two parties as a result of those communications. At the time of the alleged incident that is the subject of this lawsuit, Emily Poche (“Emily”) was the principal at the lower School attended by the children, and Claire Poche (“Claire”) was a licensed professional counselor at the Morgan Rae Center for Hope (“Rae Center”) at Manning Family Children’s Hospital (“Children’s”), where C.W. was examined following the alleged incident. Emily and Claire Poche are sisters-in-law. Even though Emily was the principal of the lower School where the alleged incident would have occurred and was responsible for the supervision of the children, plaintiffs did not name her as a defendant in the lawsuit; nor did they name Claire or Children’s.

C.W. reported the alleged inappropriate touching incident to her parent at an after-school dance class that occurred off School premises, on the afternoon of March 25, 2024.³ The dance class was not School sponsored. Following the dance class, C.W.’s parents took her to the emergency room and to Children’s to be examined, and the investigation into C.W.’s allegations commenced.

After being informed of C.W.’s allegations and that the child had been taken to Children’s for examination and investigation of the alleged incident, Emily informed the child’s parents that her sister-in-law worked there and that they were “in good hands.” Claire, however, was not involved in the initial examination of C.W. in the Children’s ER and was not assigned to her case after it was turned over to the Rae Center for further investigation. On March 26, 2024, the day after C.W. had presented to Children’s for treatment and investigation of the alleged incident, Claire accessed C.W.’s medical records. Also, on that date, Emily and Claire began communicating with one another via text messages regarding the case.

² We have recently decided two related applications arising out of the trial court’s pre-trial rulings in this case. In Docket No. 26-C-495 this court found inadmissible testimony regarding the parents’ lobbying efforts addressed to the regulation of nonpublic pre-kindergarten programs, finding it inadmissible. In Docket No. 26-C-510, we granted writs and vacated the trial court’s order compelling non-party Emily Poche to sit for a deposition when she had not been subpoenaed.

³ The Petition states that C.W. reported to her mother but other pleadings in the case have stated that she first reported to her father.

During discovery in this case, Children’s produced C.W.’s medical records to relators pursuant to a HIPAA release executed by her parents. There is no dispute that relators were entitled to the production of these records.

Sometime during the summer of this year, C.W.’s father made a complaint to Children’s alleging that Claire had improperly accessed C.W.’s medical records and had inappropriately disseminated information from those records to relators, in violation of HIPAA. On July 1, 2026, plaintiffs issued their first subpoena duces tecum to Children’s seeking information – an audit trail of all Children’s personnel who had accessed C.W.’s medical records. Thereafter, plaintiffs served a series of discovery subpoenas and subpoenas duces tecum on Children’s, Claire, and Emily, including up until early October, seeking documents and information, including communications between Claire and Emily, in confirmation of the alleged HIPAA violations. They deposed Claire on two separate occasions in September and October and sought to depose Emily on October 15, 2026.

As a result of Mr. Williams’ allegations against Claire, Children’s opened an investigation into her potential HIPAA violations. The investigators prepared a report at the completion of their investigation. As a result of the investigation, Children’s terminated Claire from her position.⁴ Emily voluntarily resigned her position at the School, effective September 8, 2026.⁵

Plaintiffs have indicated, through their witness and exhibit lists, that they intend to introduce evidence of the HIPAA violations at trial. There is no dispute that HIPAA does not provide a private right of action to enforce its privacy provisions or that no action lies in state court to enforce HIPAA.

Relators contend here, as they did in their Motion, that any alleged HIPAA violations by Children’s, a non-party, through Claire, a non-party, are not relevant to and have no bearing on the negligent supervision claims asserted by plaintiffs in this case. They assert that they are not subject to regulation under HIPAA and that, accordingly, the jury may not find a HIPAA violation or consider any in determining liability or damages. They assert that plaintiffs are improperly attempting to have a trial for HIPAA violations within a trial for negligent supervision. Relators claim that no after-the-fact interactions between Claire/Children’s and Emily make it more or less likely that relators failed to supervise their students at the time of the alleged incident. Nor, they contend, did any such interactions cause or contribute to the alleged actions of W.M., the alleged perpetrator of the harm to C.W., on the date in question, or to the alleged failures of relators on that

⁴ Children’s did not conclude that Claire had improperly accessed C.W.’s medical records in violation of HIPAA; instead, Children’s concluded that “Claire’s medical record accesses were . . . permissible.” Rather, Children’s concluded that Claire had been untruthful in her interviews. Claire’s termination was recommended “[b]ecause of the three instances of impermissible disclosure, dishonesty during interview, and sensitivity of the matter.”

⁵ While Plaintiffs contend that Emily resigned her position in lieu of termination due to HIPAA violations. There is no evidence addressing the reason for Emily’s departure. HIPAA applies only to the health care industry.

date. Relators claim that the only purpose that would be served by the introduction of evidence of Children's alleged violations of HIPAA would be to confuse and inflame the jury.

On the other hand, plaintiffs contend that the HIPAA evidence is relevant to allow the jury to determine whether witnesses are improperly motivated, whether accounts of the alleged incident were coordinated between Children's and relators, and whether the results of investigations made by relators and/or Children's may be trusted. Plaintiffs further contend that the HIPAA evidence is relevant to test the credibility of the witnesses.⁶

On October 21, 2026, following a hearing on the Motion (and other matters) that occurred on October 20, 2026, the trial court entered judgment granting the Motion "to the extent that the Plaintiffs shall not put on evidence at trial to prove HIPAA violations on the part of defense counsel or involvement by defense counsel in HIPAA violations." The Motion was otherwise denied as the court found that "any issues can be addressed by jury instructions."

DISCUSSION:

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." La. C.E. art. 401. **Evidence which is not relevant is not admissible.** La. C.E. art. 402. Even if relevant, evidence may nevertheless be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time." La. C.E. art. 403.

A motion *in limine* presents an evidentiary matter that is subject to the great discretion of the trial court. *Moonan v. Louisiana Med. Mut. Ins. Co.*, 16-113, p. 7 (La. App. 5 Cir. 9/22/16), 202 So.3d 529, 534, *writ denied*, 16-2048 (La. 1/9/17), 214 So.3d 869, *citing Heller v. Nobel Ins. Grp.*, 00-0261 (La. 2/2/00), 753 So.2d 841. Relators challenge the partial denial of their Motion as an error of law in that the trial court purportedly read La. C.E. arts. 401-403 to allow a jury to hear that a nonparty violated a federal statute that does not regulate them and supplies no private right of action. Because that challenge presents a question of law, our review of it is *de novo*; a motion *in limine* is not intended to resolve issues of law, "for which no discretion is granted and review is *de novo*." *Succession of Shaw v. Alexandria Inv. Grp., LLC*, 17-582 (La. App. 3 Cir. 7/26/17), 248 So.3d 332, 336. To the extent our ruling rests on the balancing required by La. C.E. art. 403, we review that determination for abuse of discretion. Under either standard of review, we find that the HIPAA evidence is irrelevant and inadmissible in this negligent supervision case.

Plaintiffs have stipulated that they are not making any HIPAA claims in this lawsuit. Relators are not subject to HIPAA; therefore, they cannot

⁶ The plaintiffs also contend that relator's Motion was untimely. It was within the trial court's discretion to take up relators' Motion. The trial court did not abuse its discretion in permitting the Motion to go forward.

have violated its privacy rules. Children's is not a party to this lawsuit; nor could it be made a party based on any HIPAA violation because HIPAA does not provide a private right of action. Further, any HIPAA violation committed by Children's as a result of Claire's actions occurred after the events giving rise to plaintiffs' negligent supervision claims asserted in this action and has no bearing on any issues to be determined by the jury. Although the trial court's judgment addressed HIPAA violations "on the part of defense counsel," relators' Motion sought to exclude all evidence of the alleged HIPAA violations, and the legal premise that a non-party's HIPAA conduct is irrelevant to the negligent supervision claims applies with equal force to the conduct of Children's and Claire.

The elements of plaintiffs' negligent supervision claims in this case are: (1) negligence on the part of the School, its agents, or teachers in providing supervision; (2) a causal connection between the lack of supervision and the injuries sustained by C.W.; and (3) the risk of unreasonable injury was foreseeable, constructively or actually known, and preventable if a requisite degree of supervision had been exercised. *Wallmuth v. Rapides Parish School Board*, 01-1779 (La. 4/3/02), 813 So.2d 341, 346; *Carter ex rel. Carter v. E. St. John Elementary Sch.*, 12-174 (La. App. 5 Cir. 11/13/12), 105 So. 3d 856, 859; *Robinson v. Jefferson Parish School Board*, 08-1224 (La. App. 5 Cir. 4/7/09), 9 So.3d 1035, 1046, *writ denied*, 09-1187 (La. 9/18/09), 17 So.3d 975. The fact that Children's, a non-party, may have committed HIPAA violations in conjunction with the handling of C.W.'s medical records does not make any element of plaintiffs' negligent supervision claims more or less likely; nor can evidence of a HIPAA violation form the basis of a damage award or any increase in a damage award.

The HIPAA evidence is irrelevant and therefore inadmissible. Moreover, even if such evidence were relevant, La. C.E. art. 403 requires a balancing of the prejudicial nature of the evidence against its probative value. In this case, the introduction of such evidence would be highly prejudicial and would outweigh any probative value. It would serve only to confuse the issues and/or to prejudice and mislead the jury.

The same is not true of the interactions and communications between Claire and Emily. The plaintiffs claim that the evidence of these communications is relevant under La. C.E. art. 607(D)(1) to show bias, interest, or collusion in conjunction with relators' investigation of the alleged incident and potentially for impeachment purposes. We agree.

The text messages are relevant to the extent that Claire provided the information contained therein to relators shortly after the alleged incident, prior to the filing of the lawsuit, and outside the discovery process established by the Louisiana Code of Civil Procedure. This evidence may be introduced to demonstrate what, if any, effect the medical information provided by Claire to Emily during that period had on relators' investigation of and response to the alleged incident and to demonstrate whether a "story" was coordinated between relators and Claire, as a representative of Children's.

The communications are admissible solely for these limited purposes. They may not be used to prove that any party or non-party violated HIPAA, and the specific instances of impermissible disclosure identified in Children's investigation shall be redacted. The communications shall also be screened to exclude matters already held inadmissible, including the plaintiffs' legislative lobbying efforts. The trial court should give an appropriate limiting instruction and should, under La. C.E. art. 403, ensure that the probative value of the communications is not substantially outweighed by the danger of unfair prejudice or confusion of the issues.

Accordingly, for the reasons stated above, we grant the writ application, in part, and find that no evidence of HIPAA or HIPAA violations may be introduced at trial. We deny the writ application, in part, and find that plaintiffs may introduce evidence related to the communications and interactions between Claire and Emily Poche for the purposes stated herein

Gretna, Louisiana, this 24th day of October, 2026.

FHW
JGG
MEJ
JJM

Fifth Circuit Court of Appeal State of Louisiana

NO. 26-C-513

JANA PODRET WIFE OF/AND ROGER WILLIAMS
INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILD
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WINDHORST, J., DISSENTS IN PART WITH REASONS

I respectfully dissent in part with the majority disposition. I would deny the entire writ application on the showing made. At this point, the trial court has only denied in part the motion in limine indicating it is not excluding the information. At trial, the parties must lay the proper foundation to admit any of the evidence, establish the evidence is relevant, and show it is more probative than prejudicial. The trial court has discretion to change its ruling during trial and/or limit the extent to which the evidence is admitted. As a general rule, trial courts are afforded great discretion concerning the admission of evidence, and their decisions to admit or exclude evidence should not be reversed on appeal in the absence of an abuse of their discretion. Williams v. Alexander, 24-492, p. 12 (La. App. 5 Cir. 10/17/25), 426 So.3d 55, 67. I cannot say the trial court has abused its discretion at this point in the proceedings

SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

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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 **10/24/2026** 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
CLERK OF COURT

26-C-513

E-NOTIFIED

24th Judicial District Court (Clerk)	
Honorable Stephen D. Enright, Jr. (DISTRICT JUDGE)	
Jack E. Truitt (Respondent)	Thomas M. Flanagan (Relator)
Anders F. Holmgren (Relator)	Kelly Gayle Juneau Rookard (Relator)
Michelle M. Davis (Respondent)	Lou Anne Milliman (Respondent)
	Richard C. Trahan (Respondent)

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