

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0096

ROBERT THOMAS MCGREGOR AND RUTH MCGREGOR,
INDIVIDUALLY AND ON BEHALF OF HER DECEASED HUSBAND,
DONALD H. MCGREGOR

VS.

HOSPICE CARE OF LOUISIANA IN BATON ROUGE, L.L.C., HOSPICE
CARE OF LOUISIANA, INC., THE HOSPICE FOUNDATION OF
GREATER BATON ROUGE, D/B/A HOSPICE OF BATON ROUGE, DR.
GERALD P. MILETELLO, DR. GEORGIA REINE, CYNTHIA LOGAN,
MELANIE HYATT, AND KATHRYN BRAUD

JUDGMENT RENDERED: November 3, 2006

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
DOCKET NUMBER 509,929, DIVISION I
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE R. MICHAEL CALDWELL, JUDGE

ROY RASPANTI
METAIRIE, LA

COUNSEL FOR PLAINTIFFS/APPELLANTS
ROBERT THOMAS MCGREGOR AND
RUTH MCGREGOR, INDIVIDUALLY AND ON
BEHALF OF HER DECEASED HUSBAND,
DONALD H. MCGREGOR

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GERALD P. MILETELLO, M.D.

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Carter J. Carter
Whipple J. concurs.

McDONALD, J.

This is an appeal of a trial court judgment dismissing the plaintiffs' suit pursuant to a declinatory exception pleading the objection of *lis pendens*. We affirm.¹

On July 21, 2003, Robert T. McGregor (Robert) and Ruth McGregor (Ruth) individually and on behalf of her deceased husband, Donald H. McGregor (Donald), filed suit number 509,929 in the Nineteenth Judicial District Court (suit 509,929). The petition named several defendants, including Dr. Gerald P. Miletello (Dr. Miletello). Essentially, the petition stated allegations of breach of contract based on the defendants' alleged failure to provide adequate pain medication to Donald during the last three days of his life. The plaintiffs subsequently dismissed the suit against Dr. Miletello without prejudice, because the claims against him were pending before a medical review panel in accordance with the Louisiana Medical Malpractice Act.²

After the medical review panel proceedings were complete, the plaintiffs filed suit number 524,336 in the Nineteenth Judicial District Court (suit 524,336) against Dr. Miletello and another defendant for medical malpractice. Subsequently, plaintiffs filed a third supplemental and amending petition in suit 509,929, alleging claims for breach of contract against Dr. Miletello arising out of his failure to provide adequate pain medication to Donald during the last three days of his life. In response, Dr. Miletello filed a motion to strike the petition, or in the alternative, exceptions pleading the objections of *lis pendens* and *res judicata*. The trial court found that the claims against Dr. Miletello in suit 509,929 fell within the definition of malpractice found in the Louisiana Medical Malpractice Act and rendered judgment dismissing the plaintiffs' third supplemental and amending

¹ This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

² La. R.S. 40:1299.41 *et seq.*

petition in suit 509,929, without prejudice, as to Dr. Miletello. This appeal followed.

Plaintiffs' sole contention on appeal is that the trial court erred in dismissing the claims against Dr. Miletello in suit 509,929 because there was no identity of parties between that suit and suit 524,336. Specifically, plaintiffs contend that Robert is not a plaintiff in both suits as he was improperly dismissed from suit 509,929 prior to the filing of the third supplemental and amending petition. This argument is without merit.

It is true that Robert's claims in suit 509,929 were dismissed by judgment of the trial court signed September 1, 2004; however, the third supplemental and amending petition filed in that suit on April 11, 2005, specifically names Robert as a plaintiff in asserting claims against Dr. Miletello. Furthermore, plaintiffs do not dispute that Robert is a plaintiff in suit 524,336, which also states claims against Dr. Miletello. Therefore, the record demonstrates that Robert was a party plaintiff in both suits against Dr. Miletello. Thus, we find no error in the trial court's judgment. Accordingly, the judgment of the trial court is affirmed. All costs of this appeal are assessed to plaintiffs, Robert T. McGregor and Ruth McGregor.

AFFIRMED.