**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 0908

WILLIAM A. COUVILLION, DDS
AND OMS NATIONAL INSURANCE COMPANY

VERSUS

DARBY DENTAL SUPPLY, LLC,
AND MILTEX, INC., A DIVISION OF INTEGRA LIFESCIENCES
HOLDING CORPORATION

Judgment Rendered: FEB 15 2013

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 598,009

The Honorable Timothy Kelley, Judge Presiding

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Holding Corp.

* * * * *

BEFORE: GUIDRY, CRAIN, AND THERIOT, JJ.

**CRAIN, J.**

William A. Couvillion, DDS, and OMS National Insurance Company (Plaintiffs) appeal a summary judgment dismissing their Louisiana Products Liability Act (LPLA) claims against Miltex, Inc., now known as Integra York, PA, Inc. (Integra). For the following reasons, we affirm.

## FACTS

One of the patients of William A. Couvillion, DDS (Couvillion) suffered cuts to both corners of her mouth during a procedure in which Couvillion, an oral surgeon, extracted her third molars (wisdom teeth). After the patient filed a medical malpractice complaint against Couvillion, and while the medical review panel proceeding was pending, plaintiffs instituted this suit against Darby Dental Supply, LLC (Darby) and Integra. Plaintiffs allege that during the procedure Couvillion used what he thought was the single-edged Integra-manufactured surgical blade that he ordered from Darby; however, the blade was actually a different Integra-manufactured blade, shaped the same, but with two sharpened edges. Plaintiffs contend that the sole or contributing causes of the patient's injuries were the fault of Darby in shipping the wrong surgical blades and the fault of Integra in designing, manufacturing, and shipping surgical blades in deceptively similar packaging that does not allow a user to readily distinguish between the single-edged and double-edged blades.

Integra filed a motion for summary judgment alleging that plaintiffs could not recover under the LPLA because they could not prove either causation between the alleged damage and the alleged failure to warn or that a characteristic of the product rendered the product unreasonably dangerous. Plaintiffs opposed the motion, arguing that adequate discovery had not been completed and that genuine issues of fact precluded summary judgment. After considering the evidence

presented, the trial court granted the motion for summary judgment and dismissed plaintiffs' claims against Integra. Plaintiffs now appeal.

## DISCUSSION

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. *All Crane Rental of Georgia, Inc. v. Vincent*, 10-0116 (La. App. 1 Cir. 9/10/10), 47 So. 3d 1024, 1027, *writ denied*, 10-2227 (La. 11/19/10), 49 So. 3d 387. Summary judgment is favored and designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. Pro. art. 966A(2).

A defendant's motion for summary judgment may be made at any time, and shall be granted when, "[a]fter adequate discovery or after a case is set for trial," the motion shows no genuine issue as to material fact or that the mover is entitled to judgment as a matter of law. La. Code Civ. Pro. art. 966A(1) and C. Appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *All Crane*, 47 So. 3d at 1027. On a motion for summary judgment, the burden of proof is on the mover. La. Code Civ. Pro. art. 966C(2). If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion, the mover's burden does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. *Id.* If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment as a matter of law. La. Code Civ. Pro. art. 966C(2); *All Crane*, 47 So. 3d at 1027.

In ruling on a motion for summary judgment, the court's role is not to evaluate the weight of the evidence or to determine the truth of the matter but, instead, to determine whether there is a genuine issue of triable fact. *All Crane*, 47 So. 3d at 1027. A court cannot make credibility decisions on a motion for summary judgment. *Id.* In deciding a motion for summary judgment, the court must assume that all of the witnesses are credible. *Id.* Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. *Id.*

A fact is material when its existence or nonexistence may be essential to the plaintiffs' cause of action under the applicable theory of recovery. Facts are material if they potentially insure or preclude recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512 (La. 7/5/94), 639 So. 2d 730, 751. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So. 2d 131, 137.

First, as they did before the trial court, plaintiffs argue on appeal that summary judgment is inappropriate because there has been inadequate discovery. Plaintiffs state "[a]dequate discovery . . . cannot be completed without the presence of the patient in [the] discovery process." Plaintiffs fail to explain what information, under the particular circumstances of this case, the patient could provide relative to the liability and causation issues between plaintiffs and the manufacturer, Integra. It is well-settled that a trial court has discretion to entertain a motion for summary judgment before discovery has been completed. *Daniels v. USAgencies Cas. Ins. Co.*, 11-1357 (La. 5/3/12), 92 So. 3d 1049, 1054. We find no abuse of the trial court's discretion in proceeding with the motion for summary judgment.

Next, plaintiffs allege liability on the part of Integra for "designing, manufacturing and shipping blades in deceptively similar appearing packaging which does not allow a user to readily [distinguish] between . . . two very different types of blades." Plaintiffs contend that this, combined with Darby's alleged fault in shipping the wrong blades, "created a knowingly dangerous situation [that] led Couvillion into a false sense of security that in fact he was using the blade that he had ordered." They further allege that Darby and Integra took no steps to warn Couvillion of this unreasonably dangerous condition.

The LPLA is set forth in Louisiana Revised Statutes 9:2800.51 *et seq.*, and establishes the exclusive theories of liability for manufacturers for damages caused by their products. La. R.S. 9:2800.52; *Gruver v. Kroger Co.*, 10-689 (La. App. 3 Cir. 2/2/11), 54 So. 3d 1249, 1254, *writ denied*, 11-0471 (La. 4/25/11), 62 So. 3d 92. Specifically, the LPLA provides that "[t]he manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product." La. R.S. 9:2800.54A. In a products liability case, the plaintiff is required to prove: (1) that the defendant manufactured the product; (2) that a characteristic of the product proximately caused the alleged damage; (3) that the characteristic made the product "unreasonably dangerous;" and (4) that the damage arose from a reasonably anticipated use of the product. La. R.S. 9:2800.54A; *Jack v. Alberto-Culver USA, Inc.*, 06-1883 (La. 2/22/07), 949 So. 2d 1256, 1258. If a plaintiff fails to establish any one of the above elements, his claim must fail and he cannot recover.

Louisiana Revised Statutes 9:2800.54B provides:

> A product is unreasonably dangerous if and only if:
>
> (1) The product is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

(2) The product is unreasonably dangerous in design as provided in R.S. 9:2800.56;

(3) The product is unreasonably dangerous because an adequate warning about the product has not been provided as provided in R.S. 9:2800.57; or

(4) The product is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

Plaintiffs contend that Couvillion was not adequately warned that he was using a double-edged, as opposed to a single-edged, surgical blade. Therefore, their claim relies on Section 2800.54B(3).

Louisiana Revised Statutes 9:2800.57 provides, in pertinent part:

A. A product is unreasonably dangerous because an adequate warning about the product has not been provided if, at the time the product left its manufacturer's control, the product possessed a characteristic that may cause damage and the manufacturer failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product.

B. A manufacturer is not required to provide an adequate warning about his product when:

(1) The product is not dangerous to an extent beyond that which would be contemplated by the ordinary user or handler of the product, with the ordinary knowledge common to the community as to the product's characteristics; or

(2) The user or handler of the product already knows or reasonably should be expected to know of the characteristic of the product that may cause damage and the danger of such characteristic.

Integra supported its motion for summary judgment with Couvillion's responses to requests for admissions wherein he admits that he is a specialist in oral and maxillofacial surgery, having been in practice for forty seven years. Performing third molar extractions is a routine part of Couvillion's practice. Couvillion admits that he is familiar with the instruments that he routinely used to extract third molars, i.e., the single-edged blade, but denies familiarity with the instrument that he used when the patient was injured, i.e., the double-edged blade. Additionally, during the hearing on the motion for summary judgment, plaintiffs

did not dispute that Couvillion is, in fact, a "sophisticated user." A manufacturer has no duty to warn a "sophisticated user" of dangers associated with a product, which dangers they may be presumed to know because of their familiarity with the product. *See Contranchis v. Travelers Ins. Co.*, 02-840 (La. App. 5 Cir. 1/28/03), 839 So. 2d 301, 304.

The summary judgment evidence establishes that a variety of surgical blades are available to surgeons. Plaintiffs argue that Integra has a duty to warn expert surgeons, which Couvillion attests to be, which instrument they are using. It is undisputed that Couvillion is an experienced oral surgeon and that he routinely uses surgical blades in his practice. The summary judgment evidence additionally establishes that Couvillion is a sophisticated user of surgical blades, and is presumed to know that surgical blades have sharp edges. That danger is one which defendants had no duty to warn Couvillion. Finally the summary judgment evidence additionally establishes that Couvillion understands the danger of using an incorrect surgical instrument. After *de novo* review, we conclude that pursuant to Louisiana Revised Statutes 9:2800.57B, Integra had no duty to warn Couvillion of the alleged dangers associated with its surgical blades. *Compare Matherne v. Poutrait-Morin/Zefal-Christophe, Todson, Inc.*, 02-2136 (La. App. 1 Cir. 12/12/03), 868 So. 2d 114 (finding that bicyclist was a sophisticated user of a bicycle's toe clips).

Couvillion admits he did not personally review the packaging about which he now complains. Nevertheless, he claims Integra failed to adequately warn him of the blade he was using. We have reviewed photographs of the packaging for the single-edged and double-edged blades. The packaging identifies the blades by reference numbers "REF 4-312" (the single-edged blade) and "REF 4-312B" (the double-edged blade). Additionally, the packaging contains an illustration of the blade with the sharpened edge(s) indicated by a distinctive white line on the solid

colored blade. We find that reasonable minds could not disagree that the packaging is not deceptively similar so as to render the surgical blade unreasonably dangerous, particularly for a sophisticated user who is or should be aware of the inherent dangers of surgical blades. Integra met its burden on the motion for summary judgment of pointing out the absence of factual support for plaintiffs' claim. Plaintiffs then failed to meet their burden of providing sufficient evidence to establish that they will be able to satisfy their evidentiary burden at trial.

## CONCLUSION

For the foregoing reasons, the judgment of the trial court dismissing plaintiffs' claims against Integra is affirmed. Costs of this appeal are assessed to William A. Couvillion, DDS and OMS National Insurance Company.

**AFFIRMED.**