NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

GH

2018 CA 0132

RIDDER WILLIAMS CROCKER, INDIVIDUALLY AND ON BEHALF OF HER DECEASED SON, JERRY LEE SHEPPARD

VERSUS

BATON ROUGE GENERAL MEDICAL CENTER-MID CITY AND ITS STAFF, INCLUDING BUT NOT LIMITED TO THE BEHAVIORAL HEALTH UNIT, WILLIAM T. ELLIOT, MD AND JOSEPH THOMAS, JR., MD

Judgment rendered OCT 2 5 2018

* * * * *

On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C650373, Sec. 22

The Honorable Timothy Kelley, Judge Presiding

* * * * *

Bobby R. Lormand, Jr. Baton Rouge, LA	Attorney for Plaintiff/Appellant Ridder Williams Crocker, et al.
Michael M. Remson Craig J. Sabottke N. Courtenay Simmons Baton Rouge, LA	Attorneys for Defendant/Appellee Baton Rouge General Medical Center
Donald R. Dobbins Baton Rouge, LA	Attorney for Defendant/Appellee Christian M. Zeno

* * * * *

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

WJC by GH

Crain J., concurs

McDonald, J. dissents and assigns reasons.

HOLDRIDGE, J.

Plaintiff, Ridder Williams Crocker, individually and on behalf of her deceased son, Jerry Lee Sheppard, appeals a judgment granting a peremptory exception raising the objection of prescription filed by defendant, Christian Zeno, and dismissing him from this personal injury lawsuit. For the reasons which follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 2, 2016, Ms. Ridder filed this lawsuit against Mr. Zeno and Baton Rouge General Medical Center-Mid City (BRGMC) and its employees, Dr. Joseph Thomas, Jr., Dr. William Elliot. Therein, Ms. Crocker made the following allegations: Jerry Sheppard, her son, was severely mentally impaired and was unable to provide an address where he lived, unable to provide a telephone number of how he could be called, and was unable to call anyone. Because of Jerry's severe mental impairments, he depended on family members to care for him. Jerry's sister, Sheila Andrews, with whom Jerry was residing at the time, brought Jerry to the BRGMC emergency room on August 27, 2013, with complaints of auditory and visual hallucinations. Ms. Andrews provided all contact information necessary for the emergency room personnel to contact her and then, at some point, left BRGMC. At the time, Ms. Andrews lived in Baker, approximately thirteen miles from BRGMC.

Ms. Crocker further alleged that while Jerry was in the emergency room, he was evaluated by Dr. Thompson, who ordered a behavioral health unit (BHU) consult, or psychiatric evaluation. Later, there was a shift change in physicians, with Dr. Elliot taking over Jerry's care. Dr. Thomas reported to Dr. Elliot that Jerry was to undergo a psychiatric evaluation. Jerry was seen by Katherine Quinn Taylor, a social worker, who reported that Jerry was "good to go." Dr. Elliot

changed the BHU consult ordered by Dr. Thomas to a social service consult. Jerry was then discharged from the emergency room without undergoing a psychiatric evaluation.

The petition further alleges that Jerry's discharge was carried out by nurse Valerie Luquette, who, despite having Ms. Andrews' address and telephone, made no attempt to notify Ms. Andrews that Jerry was being discharged. At around 9:11 p.m. on the evening of August 27th, Jerry was escorted out of BRGMC and sent on his way. At some point, Jerry attempted to open the door of an occupied vehicle in the hospital's parking lot. The occupant brought Jerry to a security officer for questioning, and Jerry was ordered to leave the premises. Jerry then began wandering the neighborhood.

On the morning of August 28, 2013, Ms. Andrews returned to BRGMC to check on her brother and was informed he had been discharged. She contracted the police in the hopes that they would be able to help her locate her brother.

Ms. Crocker alleged that during the early morning hours of August 29, 2013, at approximately 3:00 a.m., more than 20 hours after he was discharged from BRGMC, Jerry was wandering the neighborhood and arrived at 3010 Lorraine Street in Baton Rouge. He was attempting to get into a car at that location, presumably for a place to sleep. Brittney Marshall, who lived at the residence, saw Jerry trying to get into her car and alerted her boyfriend, Mr. Zeno. Mr. Zeno grabbed a wrench and went outside, confronted Jerry, and an altercation ensued. Police were summoned to the scene; Jerry was found on the ground with injuries to his head from having been hit with a wrench and was rushed to another hospital, where he died the next day from closed-head injuries.

With respect to liability, Ms. Crocker alleged that her son's injuries and death were caused by the substandard care he received at BRGMC, which

included, among other things, Jerry having been discharged from the emergency room without an appropriate psychiatric evaluation and without an attempt to notify his family so Jerry that could find safe transportation home. She claimed that as a result of being discharged from BRGMC without notification to his family, Jerry began wandering the neighborhood and ended up in a situation where he was suspected of being a criminal, which led to Jerry having incurred fatal injuries.

As to BRGMC, Ms. Crocker alleged that her son's death was contributed to and caused by the negligence and breach of the standard of care by the hospital and its employees in: (1) failing to determine if it was necessary to arrange a means of transportation at the time of discharge as required by the hospital's policy and procedure rules; (2) failing to contact Ms. Andrews before discharging Jerry from the emergency room alone; (3) failing to perform an adequate evaluation of Jerry which would have identified his mental impairments; (4) failing to perform a psychiatric evaluation as was ordered by Dr. Thomas; and (5) requesting that Dr. Elliot change the psychiatric consult to a social service consult. She further alleged that Jerry's death was caused by the negligence of Dr. Thomas and Dr. Elliot in failing to identify that Jerry was mentally impaired and not capable of getting himself safely home from the hospital and in failing to ensure that Jerry received a psychiatric evaluation, which would have identified Jerry's mental impairments and his inability to successfully and safely get himself to his home in Baker, some thirteen miles from the hospital. Ms. Crocker alleged that the hospital was liable for the negligence of its staff members under the doctrine of *respondeat superior*.

As to Mr. Zeno, Ms. Crocker alleged that Jerry's death was contributed to and caused by Mr. Zeno when he negligently and unnecessarily used deadly force on Jerry, resulting in fatal closed-head injuries. Ms. Crocker alleged that "as a

result of the actions and/or inactions," and "negligence and vicarious liability" of the defendants described in the petition, Jerry and Ms. Crocker sustained damages particularized in the petition. Ms. Crocker further alleged that she had complied with La. R.S. 40:1231.8 by submitting her claims to a Medical Review Panel, which rendered a decision on March 21, 2016. Finally, Ms. Crocker asked that there be judgment rendered in her favor against defendants BRGMC, Dr. Thomas, Dr. Elliot, and Mr. Zeno, jointly and/or severally for all damages sought in the petition.

Dr. Thomas, Dr. Elliot, and BRGMC filed motions for summary judgment. On April 25, 2017, the trial court granted summary judgment in favor of Dr. Thomas and Dr. Elliot, dismissing all claims against those defendants with prejudice.

Thereafter, on April 28, 2017, Mr. Zeno filed a peremptory exception raising the objections of prescription and no cause of action. Mr. Zeno asserted that Ms. Crocker's cause of action arose on August 29, 2013, and expired on August 30, 2014, two and one-half years before the lawsuit was filed against him.

In opposition to the prescription objection, Ms. Crocker asserted that Mr. Zeno and the health care providers who were named in the timely filed request for a Medical Review Panel were joint tortfeasors, such that the timely filing of that request suspended the running of prescription against Mr. Zeno. In support of this claim, Ms. Crocker relied on La. R.S. 40:1231.8A(2)(a) and the interpretation of that provision by the Louisiana Supreme Court in the case of **Milbert v. Answering Bureau, Inc.**, 2013-0022 (La. 6/28/13), 120 So.3d 678.[1] She attached four exhibits to her opposition memorandum, including: (1) the death certificate showing the cause of Jerry's death to be closed-head injuries sustained in a

[1] Louisiana Civil Code article 2324(C) also provides that interruption of prescription against one joint tortfeasor is effective against all joint tortfeasors.

beating; (2) the October 10, 2013 request by Ms. Crocker to convene a Medical Review Panel; (3) an April 7, 2016 letter notifying Ms. Crocker of the decision of the Medical Review Panel; and (4) a copy of her petition for damages.

BRGMC opposed Mr. Zeno's objections of prescription and no cause of action. It denied liability, but adopted Ms. Crocker's argument that Mr. Zeno and BRGMC are joint tortfeasors under the Louisiana Medical Malpractice Act (MMA), and therefore, the timely filing of the medical malpractice claim by Ms. Ridder suspended the running of prescription until an opinion was rendered by the Medical Review Panel.

On November 8, 2017, the trial court rendered judgment maintaining Mr. Zeno's exception of prescription, dismissing Ms. Crocker's claims and causes of action against Mr. Zeno. At the hearing on the exception, the trial court admitted into evidence the four documents attached to Ms. Crocker's memorandum in opposition to the prescription objection. After hearing arguments, the trial court expressed its belief that BRGMC and Mr. Zeno were not joint tortfeasors because a temporal element connecting the two actors' conduct was absent. Specifically, the trial court noted that a joint tortfeasor relationship can arise where two or more persons are acting in concert, or where the negligence of concurrent tortfeasors occurs or coalesces contemporaneously. The trial court noted that in this case, Jerry's death resulted from the act of a second tortfeasor, Mr. Zeno, anywhere from 18 to 30 hours after Jerry was discharged from BRGMC. The trial court observed that while the actions of the health care providers and Mr. Zeno coalesced to produce one indivisible injury, these alleged negligent acts did not occur contemporaneously. Moreover, the court concluded, the defendants owed different duties to Jerry, and Mr. Zeno's negligence was wholly independent of that of the health care providers. The court stressed that adjudicating Ms. Crocker's cause of

action against Mr. Zeno did not hinge in any way on the actions of the health care providers, and because the causes of action against the multiple actors were separate and distinct, they are not joint tortfeasors, and there can be no "relation back" for the purposes of prescription.[2]

Ms. Crocker appealed, asserting that the trial court erred when it found that Mr. Zeno and BRGMC were not joint tortfeasors as alleged in the petition for damages and granted Mr. Zeno's objection of prescription, dismissing him as a defendant in this lawsuit. On February 2, 2018, this court issued a rule to show cause order, observing that the November 8, 2017 judgment granting the exception of prescription appeared to lack the specificity required to constitute a final, appealable judgment, in that it failed to specifically identify the party or parties in favor of and against whom the judgment was rendered. The rule to show cause was referred to this panel. **Crocker v. Baton Rouge General Medical Center**, 2018-0132 (La. App. 1 Cir. 4/9/18)(unpublished). On August 7, 2018, the November 8, 2017 judgment was amended by the trial court. Therein, the trial court specifically rendered judgment against Ms. Crocker and in favor of Mr. Zeno, granting his exception of prescription and dismissing all causes of action against Mr. Zeno, and dismissing him as a defendant in this proceeding. We find that the amended judgment cured any potential defect in the original judgment, and we maintain the appeal.

---

[2] The trial court also denied Mr. Zeno's objection of no cause of action. In sustaining the prescription objection, the trial court indicated the ruling was "interlocutory" and it would not designate the judgment as a final one. On October 16, 2017, this court denied Ms. Crocker's application for supervisory writs, finding that the judgment resulting in the dismissal of Ms. Crocker's lawsuit against Mr. Zeno would be an appealable partial final judgment once a judgment containing proper decretal language was signed. **Crocker v. Baton Rouge General Medical Center Mid-City**, 2017-1243 (La. App. 1 Cir. 10/16/17)(unpublished writ action).

DISCUSSION

A personal injury claim is a delictual action subject to a liberative prescriptive period of one year, commencing to run from the day the injury or damage is sustained. La. C.C. art. 3492; **McKenzie v. Imperial Fire and Casualty Insurance Company**, 2012-1648 (La. App. 1 Cir. 7/30/13); 122 So.3d 42, 47, writ denied, 2013-2066 (La. 12/6/13), 129 So.3d 534. Ordinarily, the person pleading the objection of prescription bears the burden of proving that the claim has prescribed. However, where, as here, the claim is prescribed on the face of the petition, the burden shifts to the plaintiff to show that the action has not prescribed. Id. Further, when the plaintiff's basis for claiming an interruption of prescription is that the defendant is a joint tortfeasor with a defendant who was timely sued, the plaintiff bears the burden of proving that joint tortfeasor status and of establishing that prescription has been timely interrupted against a joint tortfeasor. Id. If evidence is introduced at the hearing on the peremptory exception of prescription, the trial court's findings are reviewed under the manifest error standard of review. **Cawley v. National Fire & Marine Insurance Company**, 2010-2095 (La. App. 1 Cir. 5/6/11), 65 So.3d 235, 237. In a case involving no dispute regarding material facts, only the determination of a legal issue, a reviewing court must apply the *de novo* standard of review, under which the trial court's legal conclusions are not entitled to deference. **Id**.

Ms. Crocker argues that her timely filing of the medical malpractice claim against BRGMC pursuant to the MMA interrupted prescription on her claim for damages against Mr. Zeno. She relies on La. R.S. 40:1231.8A(2)(a) which provides, in pertinent part, that "[t]he filing of a request for review of a [medical malpractice] claim shall suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care

providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review." Ms. Crocker asserts that under the Supreme Court's interpretation of that provision in **Milbert,** BRGMC and Mr. Zeno are joint tortfeasors, and therefore, prescription was suspended against Mr. Zeno under La. R.S. 40:1231.8A(2)(a), just as it was against BRGMC with the filing of the Medical Review Panel complaint on October 10, 2013.

In **Milbert**, 120 So.3d 678, the Supreme Court interpreted the relied-upon language[3] to include non-health care provider defendants. The Court held that a non-health care provider may, in an appropriate fact situation, be a joint tortfeasor with a health care provider against whom a medical malpractice complaint has been filed, such that the suspension of time limitations for filing a complaint with the Medical Review Panel under the MMA apply to the filing of a lawsuit against a non-health care provider. **Milbert**, 120 So.3d at 684-690.

In **Milbert**, the plaintiffs sued a hospital and Dexcomm, a physician answering service, alleging that a patient was injured by the delay in the proper assessment and treatment of his medical condition. As to Dexcomm, the plaintiffs asserted that Dexcomm employees failed to promptly and accurately forward their requests for emergency care and assistance to the on-call physician, even after the on-call physician instructed them to do so, and therefore, Dexcomm's negligence contributed to the delay in treatment. The plaintiffs asserted that the hospital failed to appropriately triage the patient's condition as a surgical emergency requiring immediate attention, and the hospital emergency doctors failed to timely and accurately diagnose the patient's condition. **Milbert**, 120 So.3d at 689.

---

[3] In **Milbert**, this statutory language was found in La. R.S. 40:1299.47(A)(2)(a); that provision was redesignated by Act 94 of the 2015 Legislative Session as La. R.S. 40:1231.8A(2)(a). As the language of the two provisions is virtually identical, we shall reference the latter version, La. R.S. 40:1231.8A(2)(a), in this opinion.

Dexcomm argued that, as a matter of law, it could not be considered a joint tortfeasor with the health care providers because it did not owe the same duty as did the health care providers. Dexcomm asserted that the duties owed by a health care professional to a patient and the duties Dexcomm owed to callers as an answering service were too disparate for their independent breach to result in injury caused by joint tortfeasors. **Milbert**, 120 So.3d at 687. The Supreme Court disagreed. In so doing, it defined the term "joint tortfeasor" thusly:

> A joint tortfeasor is one whose conduct (whether intentional or negligent) combines with the conduct of another so as to cause injury to a third party. The term "joint tortfeasor" may be applied both to the situation where two or more persons are acting together in concert, or where 'the negligence of concurrent tortfeasors... occurs or coalesces contemporaneously," to produce an injury. When joint tortfeasors conspire to commit an intentional or willful act, they are solidarily liable for the damage they case. If liability is not solidary for damages caused by joint tortfeasors because the actions are not intentional or willful, then liability for damages caused by two or more persons is a joint and divisible obligation.

Milbert, 120 So.3d at 688. (citations and footnotes omitted)

Applying its definition of the term "joint tortfeasor," as well as the Louisiana duty/risk analysis, pursuant to which most negligence cases are resolved in Louisiana, the Supreme Court held that under the factual circumstances of that case, the plaintiffs were not precluded, as a matter of law, from asserting that Dexcomm was a joint tortfeasor with the health care providers. **Milbert**, 120 So.3d at 687-90. In so holding, the Court stated:

> Our review of the pleadings and argument shows the basis of the Milberts' claim of injury is primarily the delay in the proper assessment and treatment of Mr. Milbert's medical condition. Dexcomm's asserted negligence is alleged to have contributed to this delay. More particularly, Dexcomm's failure to promptly convey the Milberts' messages to Dr. Yerger is alleged to have occurred contemporaneously and in combination with the negligence of the hospital, emergency room physicians, and Dr. Yerger to cause Mr. Milbert's injury.

Milbert, 120 So.3d at 689-90.

The Court further observed that Dexcomm had a duty to act as a reasonable physician answering service, which included accurately obtaining and recording messages from its client's patients and accurately and promptly communicating such messages to the appropriate treating physician or physician on-call. It concluded that the alleged negligence of Dexcomm included the foreseeable risk that its failure to contact an on-call doctor for an emergency situation could encompass subsequent negligent delay in the patient's treatment by the hospital staff. **Milbert**, 120 So.3d at 688.

Ms. Crocker, who is claiming an interruption of prescription based on Mr. Zeno's alleged tortfeasor status with BRGMC, bears the burden of proving that status. She contends that based on the allegations of her petition, which must be accepted as true, it was the joint negligence of both BRGMC and Mr. Zeno which "occurred contemporaneously, and collectively came together," to cause Jerry's death. According to Ms. Crocker, when BRGMC breached its duty to Jerry, it created a force (Jerry's wandering the neighborhoods) which was continuous and active up until the time Jerry was struck in the head by Mr. Zeno. She posits that there was no gap in time between the results from BRGMC's negligent actions, which caused Jerry to wander the neighborhoods, and Mr. Zeno's use of excessive force causing injury. Ms. Crocker urges that "but for" the negligent actions of both BRGMC and Mr. Zeno, Jerry would not have been present at Mr. Zeno's home to receive the fatal injury.[4]

---

[4] While not specifically using the term "joint tortfeasors" in her petition, Ms. Crocker alleges that she did plead facts sufficient to establish a joint tortfeasor relationship between BRGMC and Mr. Zeno. We note that there is no requirement that Ms. Crocker use the precise term "joint tortfeasors" in the petition for the purpose of examining whether the filing of the Medical Review Panel complaint interrupted prescription as to Mr. Zeno, a non-health care provider defendant. This court squarely rejected such a contention in the case of **Wheat v. Nievar**, 2007-0680 (La. App. 1 Cir. 2/8/08), 984 So.2d 773, 776, where this court held that the fact the plaintiff did not use the specific phrase "joint tortfeasor" or employ the word "jointly" in the amending petition did not control the issue of whether the defendants were joint tortfeasors for the purpose of La. C.C. art. 2324.

Mr. Zeno did not submit any evidence in support of his prescription objection to dispute the allegations of the petition. Therefore, we accept the following allegations as true in determining whether Ms. Crocker met her burden of proving the existence of a joint tortfeasor relationship between BRGMC and Mr. Zeno: (1) Jerry was brought to the BRGMC emergency room with complaints of auditory and visual hallucinations on August 27, 2013; (2) Jerry was treated by BRGMC and discharged from the hospital at 9:11 p.m. to his own care; and (3) 30 hours later, Jerry was trying to enter a car on a private driveway and, suspecting him to be a criminal, Mr. Zeno confronted Jerry, an altercation ensued, and during that altercation, a blow was rendered to Jerry's head by Mr. Zeno, which resulted in Jerry's death due to a closed-head injury.

Considering all of the claims of improper conduct by the allegedly negligent parties, it is evident that the alleged acts of negligence in this case did not occur in concert, nor did they occur or coalesce contemporaneously. BRGMC is alleged to have committed medical malpractice by failing to properly evaluate Jerry's condition and by discharging him to his own care without proper supervision. Mr. Zeno is claimed to have negligently and unnecessarily used deadly force against Jerry, resulting in Jerry's fatal closed-head injuries. It is readily apparent that the alleged tort committed by Mr. Zeno is entirely separate and independent from the alleged medical malpractice committed by BRGMC.

In the first alleged tort, Jerry was a patient of a medical health care provider, which owed Jerry a duty to exercise a requisite amount of care that a patient in Jerry's condition may require. **Hunt v. Bogalusa Community Medical Center**, 303 So.2d 745, 747 (La. 1974). The hospital has a duty to protect a patient from dangers that may result from the patient's physical and mental incapacities as well as from external circumstances particularly within the hospital's control. See

Hunt, 303 So.2d at 747. In the second alleged tort, 30 hours after being discharged by BRGMC, Jerry was a trespasser who was attempting to enter a parked car on a private driveway and was suspected of being a criminal when confronted by Mr. Zeno, who had armed himself with a wrench. In this situation, Mr. Zeno owed Jerry a duty to refrain from willfully or wantonly injuring Jerry. See **Alexander v. General Accident Fire and Life Assurance Corp.**, 98 So.2d 730, 731-32 (La. App. 1 Cir. 1957). The duty owed by Mr. Zeno to refrain from using excessive force against Jerry was not intertwined with the duty owed by the hospital as was the case in **Milbert**. In fact, the reason Jerry was present in the driveway at 3:00 a.m. and trying to enter a parked vehicle is entirely irrelevant in assessing Mr. Zeno's fault in this case. Thus, even accepting all of the allegations of the petition to be true, we find that Ms. Crocker failed to demonstrate that BRGMC and Mr. Zeno were joint tortfeasors whose negligence occurred or coalesced contemporaneously to produce the injury causing Jerry's death.

Moreover, the law is clear that a tortfeasor is liable only for damages caused by his negligent act, and is not liable for damages caused by separate, independent, or intervening causes of damage. **Keller v. City of Plaquemine**, 96-1933 (La. App. 1 Cir. 9/23/97), 700 So.2d 1285, 1294, writ denied, 97-2635 (La. 1/16/98), 706 So.2d 977. We find no basis in law for imposing either joint or solidary liability on Mr. Zeno under the facts and circumstances of this case.[5]

Based on the allegations of the petition, we can only conclude that, for the purposes of the prescription objection, BRGMC and Mr. Zeno are not joint tortfeasors. Therefore, prescription on Ms. Crocker's cause of action against Mr. Zeno was not suspended by the filing of the malpractice claim against BRGMC under the MMA, and this lawsuit, filed against Mr. Zeno over two years after Mr.

[5] Under C.C. art. 2324, on who conspires with another to commit an intentional tort or a willful act is answerable in solido, with that person, for the damages caused by such act.

Zeno inflicted the fatal blow to Jerry, has prescribed. Accordingly, the trial court properly sustained Mr. Zeno's prescription objection.

CONCLUSION

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to plaintiff, Ridder Williams Crocker.

APPEAL MAINTAINED; AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

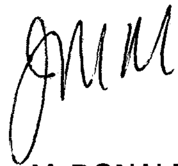
FIRST CIRCUIT

2018 CA 0132

RIDDER WILLIAMS CROCKER, INDIVIDUALLY
AND ON BEHALF OF HER DECEASED SON, JERRY LEE SHEPARD

VERSUS

BATON ROUGE GENERAL MEDICAL CENTER – MID CITY
AND ITS STAFF, INCLUDING, BUT NOT LIMITED TO
THE BEHAVIORAL HEALTH UNIT, WILLIAM T. ELLIOT, MD,
AND JOSEPH THOMAS, JR, MD



McDONALD, J., dissents.

I respectfully dissent from the majority opinion, because I think the trial court erred in granting Mr. Zeno's exception of prescription and dismissing Ms. Crocker's claims against him. I think there is sufficient evidence to find that BRGMC and Mr. Zeno were joint tortfeasors; thus, under LSA-R.S 40:1231.8(2), Ms. Crocker's filing of a request for review of her medical malpractice claim suspended the running of prescription against them both.

In determining whether BRGMC and Mr. Zeno were joint tortfeasors, I first admit that the *Milbert* court's definition of joint tortfeasors is difficult to apply – that is, I am not sure how to determine whether two tortfeasors' negligence "occurred or coalesced contemporaneously" to produce injury. *Milbert*, 120 So.3d at 688. I reject the notion, however, that "contemporaneously" necessarily means the negligence must happen at the same time.

Rather, I would analyze the issue as one of legal cause using a duty-risk analysis, where we determine whether the scope of BRGMC's duty to Jerry, as one its patients, encompassed the risk that led to his death. The scope of a duty may not encompass the risk encountered where the circumstances of the injury cannot reasonably be foreseen or anticipated, because, in that case, there is no ease of association between the duty and the risk. *Lazard v. Foti*, 02-2888 (La. 10/21/03), 859

So.2d 656, 661; *Carr v. Sanderson Farm, Inc.*, 15-0953 (La. App. 1 Cir. 2/17/16), 189 So.3d 450, 456.

Here, BRGMC had a duty to protect Jerry from dangers resulting from his physical and mental incapacities as well as from external circumstances particularly within BRGMC's control. *See Tabor v. Doctors Memorial Hosp.*, 563 So.2d 233, 239 (La. 1990); *Daniels v. Conn*, 382 So.2d 945, 949 (La. 1980); *Delaune v. Medical Ctr. of BR, Inc.*, 95-1190 (La. App. 1 Cir. 10/25/96), 683 So.2d 859, 864. Further, accepting Ms. Crocker's allegations as true, BRGMC's own policy required that it arrange transportation for patients, if necessary, by notifying its Social Services department.

BRGMC admitted Jerry as a mental patient with symptoms of auditory and visual hallucinations. Dr. Thomas ordered a psychiatric evaluation, but after a shift change, the on-duty social worker reported that "Jerry was good to go," and Dr. Elliot changed the psychiatric evaluation to a social services evaluation. Social Services was the very department responsible for arranging patient transportation – that is, patient transportation was an external circumstance particularly within BRGMC's control. But, instead, BRGMC discharged mentally unstable Jerry and escorted him from the building where he was left to fend for himself. Jerry wandered the BRCMC parking lot where he attempted to open a car door while someone was in the car. That person brought Jerry back to a BRGMC security officer, he was questioned, and then ordered to leave the premises. About 30 hours later, Jerry again attempted to enter someone else's car, which led to his fatal altercation with Mr. Zeno.

So, BRGMC had two opportunities to protect Jerry from his inability to get himself home – i.e., by following its own rule to have its Social Services department arrange transportation for him. Such could have easily been accomplished by a telephone call to Ms. Andrews, his sister, at the number she left with BRGMC personnel when she admitted Jerry to BRGMC's care. When BRGMC discharged Jerry the first time, he wandered the BRGMC parking lot and tried to get into someone's car without permission. So, at that time, BRGMC knew Jerry had not arranged for his own transportation home, should have surmised that he was unable to do so, and should have foreseen that, again left on his own, Jerry might again wander aimlessly and make

another bad decision – like again trying to get into someone else's car without permission. This is exactly what happened when Jerry encountered Mr. Zeno and was killed.

Thus, it appears to me that the scope of BRGMC's duty to twice arrange Jerry's transportation encompassed the risk that he would be unable to get home on his own, would wander in unfamiliar neighborhoods, and would encounter a person who would fatally strike him as a suspected car thief. Based on this finding, I would conclude that BRGMC and Mr. Zeno were joint tortfeasors; that Ms. Crocker's filing of a request for review of her medical malpractice claim suspended the running of prescription against them both, and I would reverse the trial court's judgment granting Mr. Zeno's exception of prescription.